



Department  
Of Justice  
33 Capitol Street



*To serve  
the people of  
New Hampshire  
with diligence,  
independence,  
and integrity...*

*To seek  
to do justice...*

**Biennial Report  
2004 – 2005**

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

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To the Citizens of New Hampshire, Governor, Executive Council  
and Members of the General Court:

I am honored to present this report detailing the work and accomplishments of the Attorney General's Office during the 2004-2005 biennium. It has been a privilege to serve as Attorney General during a portion of this past biennium while this office has accomplished the achievements that are summarized in these pages.

As highlighted on the front cover, our mission is "to serve the people of New Hampshire with diligence, independence and integrity...to seek to do justice." Accomplishing that mission in our ever-changing society requires the Attorney General's Office to be responsive to the new difficulties and problems faced by all of New Hampshire's citizens.

This report demonstrates the Department of Justice's commitment to embrace and overcome these new challenges. Being mindful that it is our children who will face these challenges in the years ahead, this office has prioritized the protection of our children during the past biennium. We have diligently enforced laws against sex offenders and drug dealers. We have demanded increased accountability from the Diocese of Manchester in promoting and ensuring child safety. We have also fought against deceptive consumer advertising and computer exploitation of minors.

This office has also responded to new threats harming our natural resources. We initiated litigation against the producers and distributors of MtBE, a chemical product which has polluted our public waters, and we have diligently pursued civil and criminal enforcement of the State's environmental laws.

The accomplishments set forth in these pages could not have been met without the extraordinary contributions of the attorneys and staff at the Department of Justice. I am very proud of the dedicated and compassionate work that they perform in such a professional manner. I would also like to thank the Governor, the Executive Council, the members of the General Court and the leaders across State government who have established strong relationships with the Department of Justice, and without whom we would be unable to carry out our important work.

During the next biennium, I look forward to continuing these efforts. By working together, we will continue to meet the needs of our citizens, and we can ensure all of New Hampshire's citizens that they will enjoy the rights and privileges granted to them under our Constitution and laws.

A handwritten signature in cursive script that reads "Kelly A. Ayotte".  
Kelly A. Ayotte  
Attorney General

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**Back Cover:** On Earth Day 2005, the Department of Justice (DOJ) Building located at 33 Capitol Street in Concord was officially designated as a federally-certified “Energy Star Building” for superior energy performance. During a special Earth Day ceremony with Governor John Lynch and Attorney General Kelly Ayotte, EPA Regional Administrator Robert Varney presented an Energy Star plaque. The photograph of that award ceremony is on the back cover of this Biennial Report.

The DOJ building is the first office building in New Hampshire to earn “Energy Star” certification. Recent upgrades reduced energy usage in the building by 37%, saving taxpayer’s money and reducing environmental pollution. The Department of Administrative Services, which managed the upgrades, plans further improvements to this and other state buildings through the State’s Building Energy Conservation Initiative and Governor Lynch’s directive for a 10% energy efficiency improvement in all state buildings.



The Criminal Justice Bureau (CJB) investigates and prosecutes major criminal cases throughout New Hampshire, including homicides, drug trafficking, economic and public integrity crimes, and Medicaid Fraud. It also handles the appeals of all criminal cases tried in New Hampshire courts. The CJB works cooperatively with police agencies statewide. It also works with administrative agencies such as the Department of Revenue and the Department of Health and Human Services to investigate and prosecute crimes unique to the areas within those agencies' purview.

The CJB is staffed by twenty-one attorneys, four investigators, three financial analysts, two paralegals, and seven secretaries. In addition to their prosecutorial responsibilities, the attorneys provide training to members of law enforcement concerning matters of criminal and constitutional law. During the biennium, attorneys taught a series of classes on criminal law

and prosecution at each of the four academies for new police officers at the Police Standards and Training Academy, as well as intermittent courses on subjects such as DWI/motor vehicle law, the New Hampshire Rules of Evidence, and trial techniques. CJB attorneys also provided a series of regional trainings for local law enforcement agencies on topics such as search and seizure and drug forfeitures and sponsored several seminars on criminal law-related matters for New Hampshire prosecutors.

In 2004, under the leadership of the Attorney General's Office, a strategic plan was created to guide the state in its response to cyber crime. The implementation of the State of New Hampshire Strategic Plan to Address Cyber Crime is enhancing public safety through a collaborative approach between federal, state, and local criminal justice agencies to develop sustainable investigations, computer forensics, prosecutions, and outreach and preparedness (Homeland Secu-

rity). Members of the CJB have devoted significant time and effort to this initiative.

The work of the various units within the CJB is described below.

### *The Homicide Prosecution Unit*

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The Homicide Prosecution Unit is staffed by five lawyers, one paralegal and one secretary. Its major functions are to assist law enforcement officers with legal issues that arise during the investigation of suspicious deaths and homicides and to prosecute homicide cases.

At the beginning of the biennium, the Unit had nine active homicide prosecutions pending. Of the nine, five went to trial during the biennium, resulting in four guilty verdicts and one acquittal. Of the remaining four cases, two were resolved by guilty pleas, one is scheduled for trial, and the remaining case is on hold pending the extradition of the defendant from South America.

During the biennium, the Homicide Prosecution Unit supervised the investigation of forty-one declared homicides, as well as several suspicious death cases. Prosecutions were initiated in connection with thirty-one of the homicides, twelve of which are pending. Nine guilty pleas were obtained in connection with eleven of the homicides (one case had multiple victims and one case had multiple defendants), and four defendants were convicted after trial. Of the ten that did not result in criminal charges, seven involved a murder followed by the suicide of the perpetrator, two were police officer-involved shootings, which the CJB determined were the result of the officer's legally justified use of deadly force, and one involved a case that the grand



Assistant Attorney General Karen Huntress uses a mannequin in Sullivan County Superior Court to show the entry and exit points of bullet wounds found during the autopsy of Nicholas Vassar at the murder trial of Ethan Vassar, his brother.

jury chose not to indict. One homicide remains unsolved.

The Unit also participated in the prosecution of three cases with the Carroll County Attorney's Office and the Merrimack County Attorney's Office. Two of the cases involved attempted murder charges, and the third involved a fatal gas line explosion.

### *The Economic Crime Unit*

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The Economic Crime Unit (ECU) prosecutes complex thefts and related crimes. Typical cases involve thefts of at least \$100,000, thefts by fiduciaries of at least \$50,000, or fraudulent acts that have multi-county or statewide impact. The investigation and prosecution of these cases often requires detailed analyses of various financial and business records to trace the disposition of stolen assets and to determine the methods used to steal them. Investigations conducted by the ECU involve the use of investigative grand juries, the execution of search warrants, and the employment of forensic accounting experts. Because the investigation and pretrial preparation of these cases tend to be protracted and the trials lengthy, they require the commitment of extensive staff time and other resources. The ECU's ability to perform forensic accounting analyses was significantly impeded during this biennium due to the elimination of a financial analyst position.

During the biennium, the ECU obtained convictions by either plea or trial in eight cases. Among its cases was the prosecution of Koji Goto of Bedford. After a multi-week trial, Goto was found guilty of 23 theft and securities felonies, involving thefts in excess of \$3,000,000 from ten victims. Goto worked for John Hancock from 1994 through October 2001. His vic-

tims were mostly elderly people who were existing John Hancock clients or who, through Goto's efforts, thought they were John Hancock clients. Goto convinced them that their money would do better in other "John Hancock investments" and, at Goto's urging, they cashed out their existing John Hancock accounts and wrote checks made payable to such entities as "Koji Goto Investor Services" and "John Hancock Financial Services." The money went directly into Goto's own bank accounts. Goto faces an additional 45 charges of theft, securities fraud, witness tampering, and criminal solicitation involving thefts of more than \$11,000,000 from other victims.

### *The Public Integrity Crime Unit*

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The Public Integrity Crime Unit investigates and prosecutes public officials who engage in criminal conduct during the course of their official duties. The conduct typically involves economic crimes, such as embezzling public funds, misuse of an official's position to obtain benefits to which the official would not otherwise be entitled, and crimes of violence or sexual misconduct by public officials.

Like economic crime cases, most public integrity crime cases are complex and require substantial resources to investigate and prosecute. The Unit routinely conducts forensic accounting analyses of government financial records, makes presentations to investigative grand juries, and consults with various experts.

The Unit prosecuted former Bartlett Chief of Police Robert Snow, who pled guilty to one count of theft by unauthorized taking (TBUT) and one count of theft by deception. The TBUT charge stemmed from the chief, acting in his official capacity, receiving a total of approximately

\$30,000 in funds that should have gone to the town, the Bartlett school system, or the state, which included funds from parking tickets, towing and storage fees, police detail work, donations to school programs, witness fees and other sources. The theft by deception charge arose from the chief's solicitation of donations to the D.A.R.E. program from people facing criminal charges, and then keeping the money, which totaled approximately \$2850. The chief was sentenced to 5 to 10 years in prison with three years deferred on the TBUT charge and an additional suspended sentence of 3 ½ to 7 years on the other felony. He was also ordered pay \$32,850 in restitution.

The Public Integrity Crime Unit is responsible for investigating every incident in which a New Hampshire police officer uses deadly force in the course of his or her duties. These investigations typically involve several attorneys responding to the scene, participating in interviews with the officers involved, and reviewing the forensic evidence. The Unit evaluates each incident to determine whether the use of deadly force was legally justified. During the biennium, the Unit responded to three such events.

### *Drug Prosecution Unit*

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The Drug Prosecution Unit plays a lead role in the investigation and prosecution of major drug trafficking activities within the state. The Unit is comprised of three attorneys, a secretary and a paralegal. They work in close cooperation with the Attorney General's Drug Task Force, the New Hampshire State Police Narcotics Investigation Unit (NIU), the Drug Enforcement Administration (DEA), and the specialized drug units within the local police departments. The attorneys prosecute cases on a statewide basis. They are

available to law enforcement agencies twenty-four hours a day to authorize one-party interceptions pursuant to RSA 570-A:2 and to provide assistance and legal guidance on such matters as arrest warrant applications, execution of search warrants, and the proper use of electronic surveillance.

During the biennium, the Drug Prosecution Unit opened 121 new cases, in addition to handling those still pending from the previous biennium. The majority of cases involve conspiracies to distribute, or the actual distribution of, large quantities of cocaine, heroin, marijuana, or other controlled drugs.

The Unit successfully undertook the prosecution of several large-scale drug traffickers during the biennium. For example:

- Brendan Morillo was convicted after trial of three counts of sale of cocaine, involving in excess of 12 ounces of cocaine. He was sentenced to ten to twenty years imprisonment and also received consecutive, suspended sentences;
- Matthew Lolicata was convicted of two counts of the sale of illegal mushrooms, subsequent offense, involving more than eight pounds of mushrooms and for conspiring to possess five pounds or more of marijuana with the intent to sell, subsequent offense. He was sentenced to 5 to 15 years in prison, with the last year of his minimum sentences being suspended if he completes all substance abuse treatment programs recommended for him by the Department of Corrections. The defendant's residence was also subject to a federal forfeiture action;
- Michale Leventis and Leslie Grant were convicted of carrying approximately 131 pounds of marijuana across the Canadian border into Colebrook.

They were each sentenced to the New Hampshire State Prison for seven and half to fifteen years, stand committed, and an additional four and a half years suspended;

- An investigation into the smuggling of drugs into the New Hampshire State Prison resulted in the seizure of more than six grams of cocaine and four grams of heroin. Convictions were obtained against the inmates who were the intended recipients of the drugs, the supplier, and three others involved in the smuggling scheme.

During the last biennium the Drug Unit supervised two electronic surveillance (wiretap) investigations pursuant to the requirements of RSA 570-A. These investigations require constant supervision by the assigned attorney, who must review the affidavits of law enforcement officers, draft the appropriate requests, obtain the court orders authorizing the wiretaps, and ensure that the orders are being implemented in accordance with applicable law.

One such electronic surveillance investigation, supervised by the Drug Prosecution Unit, ran for 78 days on 17 different phone lines. The investigation, which was largely federally funded, was led by the Manchester Police Department, with the assistance of the NIU, United States Immigrations and Customs Enforcement, DEA's High Intensity Drug Trafficking Area Task Force (HIDTA), and the Internal Revenue Service. The investigation led to the arrest of 19 people on drug offenses who are facing charges in various state and federal courts. The case is being prosecuted jointly with the United States Attorney's Office.

The main target of this investigation, Christopher Bouchard, was arrested and charged with being a Drug Enterprise Leader, a crime that carries a minimum

mandatory sentence of 25 years to life imprisonment. The drug enterprise is alleged to have involved the transportation of large quantities of cocaine and marijuana from Arizona to New Hampshire that were then sold throughout the state. It is estimated that more than \$1,000,000 worth of drugs were distributed. The United States Attorney's Office has initiated forfeiture proceedings on more than \$3 million dollars worth of assets that Bouchard and his co-conspirators are alleged to have acquired with drug proceeds.

The Drug Prosecution Unit prosecutes all forfeiture actions under New Hampshire's Controlled Drug Act. Through these prosecutions, the State seizes illicit profits and property in the hands of drug dealers that would otherwise go to facilitate the narcotics trade. Once forfeited, a portion of the value of the property is deposited in the State's general fund and the remainder is used to offset the cost of drug investigations and to fund drug treatment programs. During the last biennium, the Unit handled 34 forfeitures, involving approximately \$281,636.43 in cash, motor vehicles, firearms, and electronics. The most significant action resulted in the voluntary forfeiture of over \$229,000 in cash and a Harley Davidson motorcycle.

### *Drug Task Force*

The New Hampshire Drug Task Force (DTF) is a multi-jurisdictional task force whose primary mission is to enforce the drugs laws of the state and to provide leadership, coordination, and support to all local, county, state and federal law enforcement agencies in combating the drug problem in New Hampshire. DTF is comprised of 29 members, including investigators from the Attorney General's Office and police officers from local, county,

and state police departments. The departments loan police officers to DTF for a period of several years to work as undercover investigators, and use federal grant money to subsidize the officers' salaries. The task force works out of four regional offices covering the seacoast, central, western, and northern areas of the state.

During the biennium, DTF was involved in 1446 criminal investigations, leading to 338 arrests.

In addition, DTF was involved in three out-of-state cases that involved drug trafficking across the Maine and Massachusetts borders.

Over the course of the biennium, DTF investigators seized \$736,000 in cash proceeds of drug trafficking, 9 motor vehicles, and 38 weapons. DTF also made available more than 5,000 hours of training to its investigators and local law enforcement officers. It jointly sponsored several in-state regional training programs with DEA and provided funding for officers to attend training seminars and schools both in and out-of-state.

### *Appellate Unit*

The Appellate Unit represents the State on all appeals from state criminal convictions, both in the New Hampshire Supreme Court and the federal court system. Approximately 88% of the unit's work involves cases before the New Hampshire Supreme Court, where the great majority of its work involves defending a State criminal conviction against a challenge by the person who was convicted. However, it also initiates a limited number of appeals on behalf of the State, which typically involve a challenge to a trial court's ruling dismissing a criminal charge or suppressing evidence critical to the prosecution. The work of the Appellate Unit is central to the development of the criminal

law in this State and regularly addresses issues of importance to the general public.

During the last two years, the Appellate Unit had a staff of three full-time attorneys and one half-time attorney. For each appeal, an attorney must research the applicable law and write a legal brief in support of the State's position. With relatively rare exceptions, an attorney must also appear before the appellate court to present an oral argument.

During the biennium, the Unit filed 229 legal briefs and/or memoranda on behalf of the State with the New Hampshire Supreme Court, and five briefs with the United States Court of Appeals for the First Circuit. This was an increase of approximately 13% from the previous biennium. Because the appellate workload far exceeded that which could be completed by the Unit staff, attorneys from other sections of the Criminal Justice Bureau were called on to handle appellate cases as well.

The number of federal habeas corpus petitions filed by incarcerated defendants has increased significantly. The Bureau responded to 28 such petitions in the United States District Court during the biennium.

In addition to handling their general caseload, the attorneys in the Appellate Unit are regularly called upon to advise local prosecutors concerning on-going prosecutions. The attorneys provide information on the current status of New Hampshire criminal law, suggest strate-

gies to approach legal issues, and offer assistance in dealing with an adverse ruling of the trial court.

### *Medicaid Fraud Control Unit*

The Medicaid Fraud Control Unit (Unit) has statewide jurisdiction to investigate and prosecute fraudulent and abusive practices in the provision of health care services to New Hampshire Medicaid recipients. The Unit has a second, and equally vital, responsibility—the investigation and prosecution of cases involving crimes against residents of New Hampshire's nursing and assisted living facilities. Such cases encompass physical abuse, sexual assault, emotional abuse, neglect, and financial exploitation.

The Unit is comprised of an eight-person team that includes two attorneys, three financial analysts/auditors, two investigators, and one legal assistant. The Unit receives 75% federal funding for its operations.

#### **The Medicaid Program**

The Medicaid program, which was enacted in 1965, covers three main groups of low-income Americans: (1) parents and

### **New Hampshire Drug Task Force** July 1, 2003 to June 30, 2005

County	Cases	Arrests	Indictments
Belknap	94	29	10
Merrimack	147	27	23
Hillsborough	330	46	3
Cheshire	107	29	13
Sullivan	108	34	7
Rockingham	207	61	27
Strafford	267	47	40
Grafton	96	45	10
Coos	80	19	16
Carroll	10	1	0
<b>Totals</b>	<b>1446</b>	<b>338</b>	<b>149</b>



children, (2) the elderly, and (3) the disabled.

Unlike Medicare, which is administered and financed exclusively by the federal government, Medicaid is a joint venture between states and the federal government. While the federal government must approve each state's Medicaid program, the states are responsible for day-to-day administration. The federal government's financial commitment to a state's Medicaid program depends on the state's per capita income. New Hampshire's federal participation rate in New Hampshire is 50%, a figure that has remained constant for several years.

### Medicaid Provider Fraud

The Unit has an array of statutory remedies at its disposal to prosecute cases involving fraudulent and abusive billing practices of Medicaid service providers, ranging from criminal enforcement to administrative sanctions.

The Unit can also proceed with civil enforcement against a provider pursuant to RSA 167:61-(b-e) to recover damages caused by the provider's submission of

false claims. Under this statute, the State can recoup its losses and impose punitive economic sanctions against the recalcitrant provider.

### Patient Abuse and Financial Exploitation

There are 89 licensed nursing facilities and 139 assisted living facilities, which collectively represent home for almost 1% of the state's population. Of the more than 7,000 individuals residing in the state's nursing facilities, approximately 64% are covered under Medicaid. The Unit investigates and prosecutes those who abuse or financially exploit the vulnerable adults living in these settings.

The majority of the Unit's investigations and prosecutions originate as referrals from the New Hampshire Long Term Care Ombudsman Program (LTCOP) and the New Hampshire Division of Elderly and Adult Services (DEAS). The Unit also investigates reports received directly from other state agencies, law enforcement and private citizens.

Cases are also referred to the Unit through the twelve DHHS district offices around the state

that review Medicaid applications for long-term care coverage.

Applicants must provide full financial disclosures so that the caseworker can determine whether the applicant is financially eligible for Medicaid coverage. Federal law imposes certain limitations on financial eligibility based

on asset transfers that occur prior to the filing of an application. Often, the Medicaid application is prepared by the applicant's authorized representative under a durable power of attorney executed pursuant to RSA 506:7. If the caseworker's financial investigation reveals information that the authorized representative has possibly diverted the applicant's assets before seeking Medicaid, then the information will be referred to the Unit for further investigation.

### Summary Of Medicaid Fraud Unit Activities

During the period July 1, 2003 to June 30, 2005, the investigation and prosecution efforts of the Unit resulted in the issuance of thirty-one charges against thirteen individuals and one corporation. Ten were convicted during the same period and prosecutions are pending against the other four.

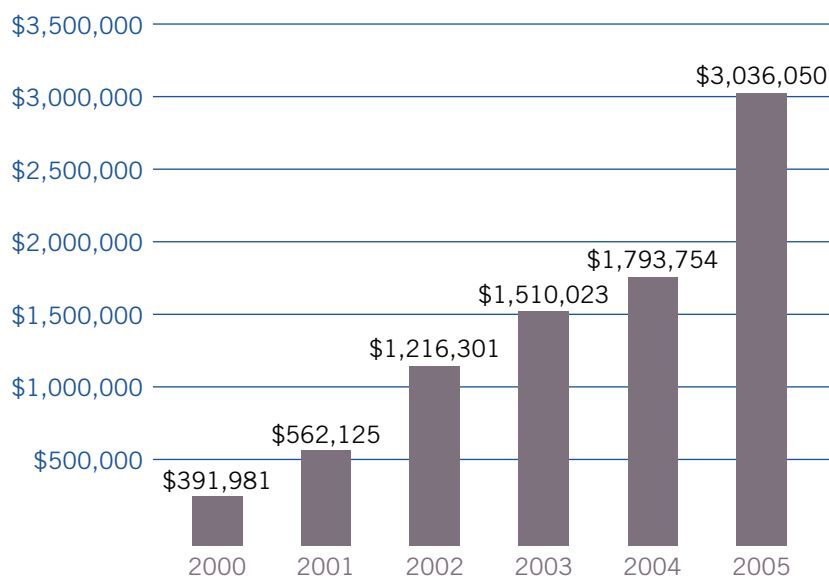
For the biennium, monetary recoveries, fines, and penalties from all cases totaled \$4,829,804. Of that amount, \$3,055,963 represents recoveries to the Medicaid Program. Patient funds restitution in financial exploitation cases (civil and criminal) totaled \$153,228. The chart on the previous page reflects the Unit's efforts during the past six years.

The following are examples of health care fraud cases that the Unit concluded during the biennium.

- State v. Stanley A. Gorgol, D.P.M., Inc. This podiatry practice pled guilty to the crime of Medicaid Fraud and paid restitution of \$18,330. The company filed more than 80 fraudulent claims to obtain reimbursement for orthotic foot devices furnished to Medicaid recipients. In addition, both the company and Dr. Gorgol, individually, entered a civil settlement under which Gorgol

### Recoveries, Fines and Penalties

Per State Fiscal Year  
July 1 to June 30





paid the State an additional \$40,000 for civil penalties and investigative costs. Gorgol was also terminated as a Medicaid provider.

- **State v. Schering-Plough.** The defendant, as part of a national settlement that the Department of Justice joined, paid the State \$1,181,041 for damages caused by the company's failure to accurately report its "best price" information for the drug Claritin. Under federal law, companies that provide pharmaceutical products to Medicaid recipients must provide the best price information, which is used to calculate rebates payable to state Medicaid programs.
- **State v. Genesis Healthcare.** The provider paid the State \$117,071 to reimburse the Medicaid Program for allegedly deficient record-keeping practices at two of its New Hampshire nursing facilities.

An example of a patient abuse and financial exploitation case that the Unit handled during the biennium:

- **State v. Huffman.** The defendant was convicted of felony theft for stealing more than \$33,000 in military pension and Social Security income from his father while his father resided at a nursing facility. The defendant was sentenced to one year in prison and ordered to pay full restitution.

The Medicaid Fraud Unit engaged in several initiatives during the biennium. It successfully spearheaded a legislative proposal that overhauled New Hampshire's civil Medicaid False Claims statute. The new statute allows private parties to sue on the state's behalf to recover damages and penalties based on the submission of false claims to the state Medicaid agency. The "relator's" suit must be filed under seal and

served on the Attorney General to allow the state the opportunity to investigate and determine whether to intervene. The goal of the legislation is to encourage individuals to report fraud to the Medicaid program by allowing the relator to obtain a share of any recovery that results from the litigation.

The Unit, in cooperation with the LTCOP and DEAS, published recommended procedures for long-term facilities to follow in cases involving the suspected financial exploitation of facility residents by authorized representatives and fiduciaries. The Unit also developed a proposed curriculum for use at the state's police training academy that focuses specifically on investigating abuse and exploitation of elderly and impaired adults.

### *Office of Victim/ Witness Assistance*

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The criminal justice system can be confusing and intimidating to people who are drawn into the system as a result of having been a victim of, or witness to a violent crime. The mission of the State Office of Victim/Witness Assistance is to ensure that such individuals are treated with dignity and respect.

The Office is staffed by the Director, an administrative assistant, a criminal justice specialist and two victim/witness advocates who are on-call 24 hours a day. Whenever a homicide occurs within the state, one of the advocates is responsible for responding to the scene to notify the victim's family of the death of their loved one and to provide immediate crisis intervention and support to family members and witnesses to the crime. The advocate continues to work closely with the family during the painful aftermath, providing a wide range of services which may include arranging for the cleanup

of the homicide scene, informing the family of the results of the autopsy, assisting them with funeral arrangements, and explaining the process of a death investigation.

The advocate will continue to provide support and services to the family as the case progresses. Those services include educating the family about the court process, providing case status reports, accompanying family members to court hearings and, if necessary, intervening with an employer, school or creditor. Advocates may also assist a family in securing the return of property being held by the police or obtaining compensation from the Victim's Compensation Commission for crime-related expenses. If a family requires services beyond the scope of the Office, the advocate will make referrals to other community agencies that can meet those needs. The advocate's involvement with a family does not end with the disposition of the criminal case, but may continue for years, throughout the post-conviction, sentence suspension/review, and parole hearings.

The advocates also work with hundreds of witnesses each year. They schedule court appearances so as to minimize any inconvenience to the witness, explain the court process and assist the witness in obtaining their statutory witness fee.

From its inception in 1990 through June 30, 2005, the Office has responded to 307 homicides, of which 49% were domestic violence related. During the 2004-2005 biennium, the Office responded to 39 homicides, of which 27, or 70% were domestic violence related. During the biennium, advocates also provided services in 22 non-homicide cases involving domestic violence and sexual assault cases, white-collar crimes and other death investigations.

The Office is also involved in a variety of statewide activities aimed at standardizing the delivery of services and support to victims of crime in New Hampshire. The staff consults with, and provides training to the county victim/witness advocates on a regular basis to ensure the comprehensive delivery of services. They also respond to calls and requests from New Hampshire citizens by providing intervention and referral services.

The Director of the Office represents the Attorney General on numerous committees and statewide initiatives including:

(1) Chair of the Sexual Assault Protocol Committee, which published the first state protocol on the medical response to sexual assault cases and provided multidisciplinary regional training on the protocol to over 2500 professionals. The Committee also developed a standardized

sexual assault forensic evidence collection kit, which is used in every hospital in the state.

(2) Chair of the Governor's Commission Domestic Violence Protocol Committee, which created protocols designed to promote an effective community response to domestic violence. Protocols were developed for individuals in a variety of disciplines, including law enforcement, medical, mental health, probation and parole, the judiciary, victim services, home health care providers, clergy and educators. During the most recent biennium, the Committee trained 800 professionals statewide on the use of the revised protocols.

The Office is involved in a State Child Advocacy Center (CAC) Project, the objective of which is to establish a CAC in each county, with the ultimate goal of standardizing the handling of child abuse and neglect cases

and minimizing the trauma to the child victim.

The Attorney General's Office is responsible for administering the New Hampshire Address Confidentiality Program (ACP), which was created in 2001 to enable people escaping from violent situations to hide their location from their assailant. The ACP sets up a substitute address that participants can use to receive services such as obtaining a driver's license, registering a car or applying to vote as an absentee voter. Mail sent to this substitute address is then forwarded to the participants by the Office, thus keeping their location confidential. Since its creation, 114 people have registered with the program and from July 1, 2003 to July 30, 2005, 4487 pieces of mail were forwarded to participants.

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**The value of the advocates' services is reflected in the following excerpts from letters that the advocates have received from families of homicide victims:**

*"When we were sent a tragedy in our lives, we were also sent special people to help us get through it."*

*"It must have been so hard for you to come and tell us such terrible news but you were so compassionate and caring and it helped us in trying to accept it."*

*"We know that there will be a lot of rough times ahead...but knowing we have caring people like yourself and everyone else on this case, helps us to accept our son's death and go on."*

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The Consumer Protection and Antitrust Bureau (Bureau) is responsible for ensuring that the consumer protection and antitrust laws of New Hampshire are enforced and that trades and businesses operating within the State of New Hampshire are conforming to governing statutes. The Bureau is responsible not only for the investigation, regulation and enforcement of the Consumer Protection Act and the antitrust laws, but also for more than thirty other statutes. The other statutes include such laws as Fair Debt Collection, Automated Telemarketing Calls and the Condominium and Land Sales Full Disclosure Acts. In addition, the Administrative Prosecutions Unit (APU) is attached to the Bureau. At the present time, there are 15 staff members and 15 volunteers.

## Direct Citizen Services

One of the Bureau's primary responsibilities is directly assisting consumers with their questions and problems. The Bureau accomplishes this with a Consumer Hotline, a voluntary mediation program, public education and outreach programs, informative brochures, a newsletter, an informative website and direct intervention.

### Telephone Hotline

The Bureau supports a Consumer Hotline dedicated to receiving telephone inquiries from consumers. The Bureau's paralegals, secretaries, attorneys and volunteers responded to approximately 30,000 telephone calls during the biennium. The Consumer Hotline is staffed between 8:00 a.m. and 5:00 p.m. Monday through Friday and can be reached at 888-468-4454.

## Consumer Complaints

The Bureau receives and responds to thousands of written complaints from consumers in New Hampshire and other states. During the biennium, over 6,500 written complaints were received and processed. Every complaint is read and reviewed and a decision is made on how best to handle the complaint. In the first instance, if appropriate, the complaint will be referred to the Bureau's Mediation Program. Other cases are investigated for civil or criminal prosecution. If the Bureau is unable to assist a consumer, the complaint may be referred to other state or federal agencies, such as the Federal Trade Commission, Attorneys General Offices in other states, or referred to private attorneys and/or small claims court.

The top 10 complaint categories in the last biennium were:

1. Automobile purchases and rentals
2. Home construction and repair
3. Internet goods and services
4. Telecommunications/slamming/cramming
5. Predatory lending
6. Mail order goods and services
7. Telemarketing
8. Furniture and home furnishing sales
9. Retail sales generally
10. Fuel and energy purchases

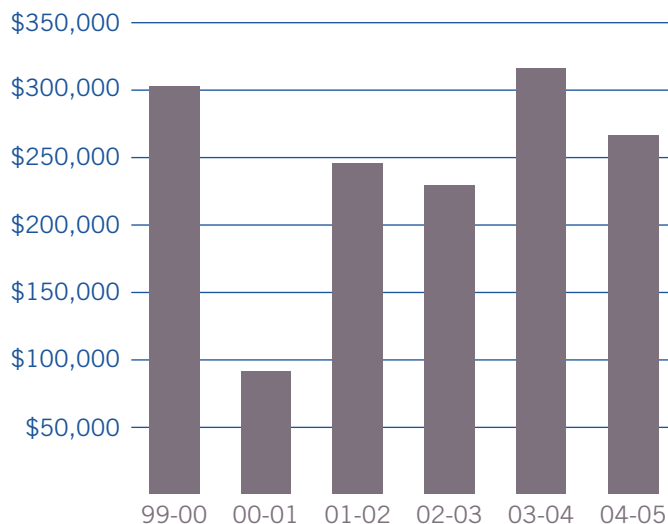
## Mediation Program

The Bureau has utilized a voluntary Mediation Program since 1992. The Bureau recruits and trains qualified non-lawyer volunteers as Consumer Affairs Specialists. These Specialists help fellow citizens and businesses resolve many kinds of consumer

complaints. The Bureau's paralegals work with the Consumer Affairs Specialists to handle the bulk of the cases in the Mediation Program. The Mediation Program allows the Bureau to reach out to and assist thousands more consumers and businesses than it would otherwise be able to assist. The Mediation Program is voluntary on the part of the businesses. However, it is generally well received by businesses and cooperation and participation is high. In the biennium, 15 volunteers worked for the Mediation Program, each working approximately six hours per week, answering telephone calls and mediating individual cases.

In the biennium, approximately 4,100 cases were referred to the Mediation Program. The total restitution recovered for consumers in the form of money, goods or services for Fiscal Year 2004 was \$315,607, and \$265,762 in Fiscal Year 2005, for a total of \$581,369 in the last biennium. This represents an increase of approximately \$108,000 over the last biennium. Consumer restitution recovered for fiscal year 2005 ranged from \$8.99 to \$10,500.

**Consumer Restitution Recovered**  
Fiscal Years 2000–2005



The work of the Bureau's Volunteers is invaluable. Many consumers would not have received assistance but for the dedication and commitment demonstrated by the Volunteers. Their success rate in resolving cases is outstanding.

#### Public Education and Outreach

The Bureau has successfully continued its goal of increasing the number of outreach programs offered to New Hampshire citizens throughout the State. Oftentimes, the Bureau partners with local police departments and other agencies for its presentations. In fiscal year 2004, with the help of Bureau Volunteers, the Bureau presented 19 outreach programs. That number was more than doubled in fiscal year 2005 with 40 outreach presentations. The Bureau's outreach includes programs specifically tailored for high school students, senior citizen groups and business organizations. With the increase in identity theft complaints, many of the Bureau's outreach programs were directed at preventing identity theft, and the steps identity theft victims should take to minimize the damage.

#### Consumer Protection Website

The Bureau also maintains an informative website for consumers—<http://www.doj.nh.gov/consumer>. Not only does it contain the complete *New Hampshire Consumer Sourcebook*, but it also lists all of the press releases and consumer alerts issued by the Attorney General's Office. During fiscal year 2005, the Bureau began publishing a newsletter, *The Consumer Advocate*, which is available on the Bureau website. Consumers may also download complaint forms and telephone log sheets to help them monitor telemarketing calls. All registration forms for condominium and land sales can be downloaded as well. Consumers may also reach the FTC's Do Not Call Registry from this site.

### Enforcement

#### Administrative Subpoenas

Under the Consumer Protection Act, the Attorney General has the authority to subpoena businesses, documents and witnesses whenever it believes a violation of the Consumer Protection Act has occurred. During the biennium, the Bureau issued 49 subpoenas.

#### Civil Actions

During the biennium, the Bureau engaged in or concluded seven consumer protection civil suits involving a wide variety of unfair and/or deceptive trade practices.

#### Criminal Prosecutions/Enforcement

Criminal prosecution of consumer protection violations continues to be a priority of the Bureau. The nature of the numerous complaints received by the Bureau has mandated that it focus its efforts particularly on home contractors.

#### Multi-State Litigation/Settlements

During the biennium, the Bureau participated in eleven multi-state actions in conjunction with many other states. The actions involved both antitrust violations and unfair and deceptive trade practices. The resulting Settlement Agreements secured close to \$190,000, in addition to money paid directly to consumers as a result of the settlements.

#### Tobacco Activities

In 1998, New Hampshire, along with 46 other states and 4 territories joined in the Master Settlement Agreement (the MSA) to resolve ongoing litigation against the four major tobacco companies. The best known

#### Court Filings

Case	Award	Penalties	Att'y Fees	Total <sup>1</sup>
NH v. 3B Holdings	\$2,468.95	\$7,046.85	\$6,676.35	\$16,192.15
NH v. CigTec Tobacco LLC	\$285,059.01	\$855,178.23	\$10,747.05	\$1,150,984.29
NH v. GTC Industries, Ltd	\$206,024.30	\$618,072.82	\$2,117.50	\$824,274.62
NH v. CigTec Tobacco LLC	\$318,920.72	\$1,145,762.16	\$622.50	\$1,528,305.38
NH v. GTC Industries, Ltd	\$206,024.30	\$618,072.90	\$1,091.25	\$825,188.45
NH v. Xuxi Hongta Changchun	\$484.25	\$0.00	\$5,365.00	\$5,849.00

In addition, cases against N.V. Sumatra, GTC Industries, Ltd. and SEKAP SA are pending in court.

<sup>1</sup>Due to the inherent difficulty of enforcing judgments against overseas defendants, many of the funds awarded by the court are as yet uncollected



provision of the MSA is where the participating manufacturers (OPMs) agreed to accept their financial responsibility to reimburse the settling states for their costs in the treatment of tobacco-related illnesses. This results in payments of approximately forty million dollars to New Hampshire every year. These payments, however, are not automatic. A complex formula is used every year to determine the amount that the State will receive. Among the factors that have an effect on the final payment are nationwide sales of tobacco products, the percentage of sales by OPMs compared to the sales by non-participating manufacturers (NPMs), or those small tobacco producers who did not join in the MSA, and the rate of inflation and other factors.

The MSA requires each settling state to enact a statute requiring NPMs to establish an escrow account in favor of each state and to pay into the escrow account a certain amount, usually between one and two cents, for each cigarette sold in the state. New Hampshire has enacted such statutes. As a result, the State retains a significant enforcement burden, which can be seen in the compliance and litigation efforts set out below.

#### *MSA Compliance*

Quarterly reporting (see Legislation, below), while very effective in increasing the State's ability to ensure compliance with the MSA, also requires significantly more resources. However, the results are worthwhile. Under the terms of the MSA, a state that fails to diligently enforce its escrow statutes will find that its annual payments are at risk. Quarterly enforcement has facilitated the Bureau's diligent enforcement.

Currently, over 300 different brands of cigarettes are sold in New Hampshire by 56 different manufacturers through 77

different wholesalers. Of these manufacturers, 31 are NPMs whose compliance with the State's escrow statutes it is the Bureau's duty to ensure.

Toward this end, each quarter, all NPMs are required to report their sales in New Hampshire to the Bureau. Wholesalers who sell in New Hampshire are likewise required to report NPM product sales in New Hampshire to the Bureau. The NPM and wholesalers' numbers are compared, and then they are compared with information from the Department of Revenue Administration regarding excise tax payments. If these numbers are not reasonably close, further inquiries are made in an effort to determine the cause of the discrepancy. Once the actual sales volume of each NPM is verified, the escrow funds are evaluated to ensure that adequate funds have been placed into escrow by each NPM. Should it be determined that an NPM has failed to abide by its escrow obligations, a warning letter is issued. If the NPM does not respond adequately, the Bureau will file suit to enforce the escrow statute. The court actions in the table on the previous page have been initiated or litigated in the past biennium.

#### *Assurances of Discontinuance*

The State has entered into Assurances of Discontinuance pursuant to NH RSA 358-A:7 with several national retailers who sell tobacco products. Pursuant to these Assurances, the retailers have agreed to enhance their efforts to avoid tobacco sales to underage purchasers. Among the actions the retailers have voluntarily agreed to establish are mandatory training of all salespersons, the installation of software on cash registers that prompts the input of the purchaser's birthdate when a tobacco product is sold, the placement of tobacco products and ad-

vertisements for such products away from products of interest to minors, mandatory compliance checks, and retraining/termination for employees who violate the sales policies of the retailer. In the past biennium, WalMart and 7-Eleven entered into such Assurances of Discontinuance.

#### *Legislation*

RSA 541-D was enacted, which establishes the directory of tobacco products eligible for sale in New Hampshire due to their manufacturer being in compliance with either the terms of the MSA or, for nonparticipating manufacturers, being in compliance with RSA 541-C, the Escrow Statute. Before a wholesaler may sell a product in the State, that wholesaler is required to check the Directory to determine whether that product may legally be sold in the State. This is significantly more efficient and cost-effective than the prior system, which required the State to litigate after the fact when a wholesaler sold nonconforming product in the State.

The "Allocable Share Amendment" was passed to close a loophole in the Escrow Statute, which served to encourage nonparticipating manufacturers to identify one or two small states as the market for the bulk of their sales. Because ultimately the escrow obligation of each manufacturer was based upon the nationwide sales of the manufacturer's products, by concentrating sales in only one or two small states, a manufacturer could escape its obligation to escrow funds. One manufacturer in particular managed to reduce its overall escrow liability in New Hampshire from over three million dollars to less than thirty thousand dollars by making use of the loophole contained in the law prior to the amendment.

Quarterly reporting requirements have recently been established, greatly increasing compliance

with the MSA by allowing a “rapid response” by the State in the event a manufacturer fails to meet its obligations under the MSA. Prior to quarterly reporting, manufacturers and wholesalers were required to report their sales and escrow payments annually. Thus, the manufacturer could be behind on its escrow obligations for a year or more before the State would be alerted to the deficiency and take action. With quarterly reporting, such arrearages are detected before the year is out, creating a more efficient enforcement process.

### **Antitrust**

The Bureau’s antitrust enforcement activities have generally been undertaken in concert with other state antitrust bureaus. Most antitrust actions are undertaken through the States’ authority to enforce federal antitrust laws as well as native jurisdiction under State antitrust statutes. Also, the scope of an antitrust enforcement action is nearly uniformly multistate, as most violations and violators exist across state borders. By pooling resources, states have found that they can prevail against large, even multinational, corporations when they violate antitrust statutes.

#### *Actions Against Pharmaceutical Manufacturers*

Much activity has recently taken place in the pharmaceutical field. The pharmaceutical industry consists of two types of manufacturers - those who are research-based and the generic manufacturers. The research-based manufacturers are those who conduct research with the hopes of developing new and profitable drugs. The generic manufacturers wait for the patents to expire on new drugs and then make low-priced copies of those drugs.

Therefore, the research-based manufacturers’ ability to earn a profit on their discoveries diminishes when their patent protection lapses. As a result, there have been several attempts to extend patent protection beyond the patent’s statutory time limit. Research-based pharmaceutical manufacturers have also paid generic manufacturers not to produce drugs when the patent expires. These activities are attempts to maintain a previously legal monopoly, after the legal protection created by the patent had expired. This is a violation of antitrust laws, and the states, along with the federal government, have been vigilant in prosecuting this activity. The Bureau has participated in investigations involving the following drugs and manufacturers in the last biennium: Cardizem, Purdue Pharma, Relafen, Remeron, Perrigo, Alparma, Taxol and BuSpar.

#### *Non-Pharmaceutical Antitrust Matters*

The Bureau has also undertaken, on a multistate basis, antitrust investigations and actions, primarily based on charges of either price fixing or monopolization, against entities other than pharmaceutical manufacturers. These are: Bentley Systems, casket manufacturers and funeral homes, Dairy Farmers of America, First Data Bank, music CD sales, and Salton Industries. The Bureau was involved in several investigations of proposed mergers, including Verizon and SBC, NewsCorp and Hughes, and Hood Milk and National Dairy Holdings.

#### *NH-Specific Antitrust Matters*

Not all antitrust matters are issues that cross state lines, however. In the past biennium, the Bureau has been involved in investigations of mergers that relate to businesses inside New Hampshire. These have primarily been healthcare-related mergers. For example, the affiliation between Valley Regional Hospital

and Dartmouth-Hitchcock was reviewed before the agreement was executed.

The Bureau has also pursued antitrust cases without multistate involvement. In the last biennium, the Bureau filed in Merrimack County Superior Court assurances of discontinuance from Sterling Jewelers, owners of Kay Jewelers and Belden Jewelers, and Simon Property Group, arising out of actions that resulted in the eviction of a local jeweler from a Simon-managed shopping mall located in New Hampshire.

### *Registration/Regulation*

#### **Condominium and Land Sales**

During the biennium, the Bureau issued 236 certificates of registration or exemptions for subdivisions under the Land Sales Full Disclosure Act and 207 certificates of registration or exemption under the Condominium Act. The State derived \$300,480 in revenues from the application fees collected by the Bureau in connection with these regulatory activities. Total registrations increased by 17% over the last biennium. Four Assurances of Discontinuance were filed with the Merrimack County Superior Court for selling lots prior to registering with the Bureau.

#### **Health Clubs**

During the biennium, 395 health clubs were registered, an increase of approximately 50% over the last biennium. The Bureau aggressively sought out health clubs that were not complying with the statutory registration requirement. Fees from registration of health clubs totaled \$39,500.

#### **Distributorships**

Eight distributorships were registered during the biennium. The types of distributorships registering included vending machine, greeting card and espresso

machine distributors. Fees from registration of distributorships totaled \$400.

### Other Registrations

Eight automatic telephone dialers registered with the Bureau during the biennium. Those telemarketers using pre-recorded messages must file and pay a \$20.00 filing fee. Two buying clubs registered with the Bureau during this biennium. Five new discount prescription drug cards registered with the Bureau during the biennium. Eighty-eight independent living retirement communities have registered with the Bureau this biennium.

RSA 151:31 requires all hospitals in the State of New Hampshire to file an annual report with the Bureau detailing the relationship between the hospitals and Physician Hospital Organizations. It also requires the Bureau to

report a summary of the results annually to the legislature. Twenty-six New Hampshire hospital and health care provider institutions have filed reports. The Bureau submits an annual report to the legislature based on the information received from the hospitals.

### *Administrative Prosecutions Unit*

The Bureau's Administrative Prosecutions Unit (APU) regularly investigates and prosecutes professional misconduct cases before the following New Hampshire licensing bodies: the Board of Allied Health Professions; the Board of Chiropractic Examiners; the Board of Dental Examiners; the Joint Board of Licensure and Certification; the Board of Medicine; the Board of Mental Health Practice; the Board of Pharmacy;

Board of Podiatry and the Board of Veterinary Medicine. During the biennium, the APU also investigated and/or prosecuted cases for the Board of Accountancy; the Real Estate Appraiser Board; the Board of Barbering, Cosmetology and Aesthetics; and the Board of Nursing Home Administrators.

Two attorneys, an investigator and a secretary staff the Administrative Prosecutions Unit. The table below summarize cases handled by the APU over the last biennium.

In those cases that were heard by an administrative board at which an APU attorney acted as hearing counsel, two resulted in reprimand or required the licensee to take remedial measures, six resulted in license suspension or revocation and one resulted in a finding of no professional misconduct. Settlements after

## Consumer Protection and Antitrust Bureau *Biennium At-A-Glance*

Number 1 Consumer Complaint	Automobile purchases & rentals
Consumer Hotline	30,000 calls
Written Consumer Complaints	6,500
Outreach programs	59
Consumer Restitution in Mediation Program	\$581,369
Civil Prosecutions, Restitution Ordered	\$352,899
Restitution Obtained From Multi-State Actions	\$190,000
Total Damages, Attorney Fees and Penalties Awarded Against Tobacco Manufacturers for Violating Master Settlement Agreement	\$4,350,794
Settlement for In-State Antitrust Action	\$45,000
Condominium and Subdivision Applications Processed	443
Condominium and Subdivision Fees Collected	\$300,480
Health Clubs Registered	395
Number of Cases Opened in Administrative Prosecutions Unit	215
Number of APU Cases Resulting in License Surrender or Revocation	21
Number of APU Cases Resulting in Confidential Letters of Concern	31
Number of APU Cases Resulting in No Discipline	53
Total Fines Issued in APU Cases	\$85,400

investigation resulted in twenty-one license surrenders or revocations, thirty-one confidential letters of concern and fifty-three findings of no discipline warranted. In addition, the boards assessed \$85,400 in fines against licensed professionals in the biennium in cases involving APU lawyers and investigators.

The APU opened 215 cases in Fiscal Years 2004 and 2005. The largest number were opened for the Board of Medicine (90), the Board of Mental Health Practice (30), and the Board of Pharmacy (30).

A summary of a sampling of the matters handled during the biennium by the APU for the client boards follows:

#### *Professional Engineers Board*

A licensed professional engineer was accused of misconduct in using confidential information and the resources of his former employer to start up his own firm and divert clients to the new firm. The APU negotiated a settlement agreement with the engineer who received a reprimand and was required to complete 60 hours of ethics training. In addition, the engineer's license was suspended for six months (stayed for one year) and he was assessed an administrative fine of \$10,000.

#### *Physical Therapy Governing Board*

APU assisted the Board in the investigation and prosecution of a case against a physical therapist after a client alleged that his physical therapist had engaged in fraudulent billing and had failed to provide treatment records upon request. After a hearing at which an APU attorney acted as hearing counsel,

the Board ordered that the physical therapist's license be revoked for one year, that he pay an administrative fine of \$2,000 and that he complete an additional 15 hours of continuing education in his field.

#### *Occupational Therapy Governing Board*

The Board was notified that an occupational therapist had been fired by her employer for fraudulent billing and improper charting of visits to home-bound clients. APU assisted the Board with the investigation of this case and negotiated a settlement agreement with the occupational therapist. The settlement agreement included a reprimand and required the therapist to pay a \$500 administrative fine, complete a course in healthcare ethics and complete a computer training course.

#### *Respiratory Care Practitioners Governing Board*

A respiratory therapist's license was revoked and he was ordered into substance abuse treatment after he was caught stealing drugs from the hospital where he worked.

#### *Board of Podiatry*

A podiatrist agreed to voluntarily surrender his license in the face of allegations that he conducted two surgeries, where one would have been sufficient, in order to bill the insurance company twice. In addition, he was accused of failing to use sufficient sterilization procedures resulting in a bone infection after surgery.

#### *Board of Dental Examiners*

After a two-day hearing, the New Hampshire Board of Dental Examiners found that a dentist had failed to comply with Center

for Disease Control (CDC) and American Dental Association (ADA) Guidelines regarding infection control practices. The dentist's license was suspended and he was required to hire a private consultant to ensure that his practice meets all health and safety guidelines prior to its reopening.

#### *Board of Medicine*

APU investigated and prosecuted several cases in which doctors licensed in New Hampshire were accused of sexual misconduct with patients or former patients. In one case, APU assisted the Board of Medicine in the issuance of an emergency suspension of license against a doctor of osteopathy when an investigation revealed that the doctor had engaged in sexual misconduct with one of his former patients. Prior to hearing, APU negotiated a settlement agreement whereby the doctor consented to the permanent revocation of his license to practice medicine in the State of New Hampshire.

#### *Board of Veterinary Medicine*

APU investigated two separate complaints from clients alleging that a doctor of veterinary medicine failed to provide competent advice and treatment to their pets. In one case, it was alleged that the doctor failed to provide antibiotics or pain medication for a dog after a surgical procedure. In the second case, the doctor failed to treat a dog that had consumed an ultimately lethal amount of chocolate. At the conclusion of APU's investigation, the veterinarian entered into a settlement agreement the terms of which included a reprimand, 10 hours of continuing education, and unannounced inspections for one year.



The Environmental Protection Bureau (Bureau) performs two central functions: enforcing environmental laws through civil and criminal court actions and providing legal counsel and representation to the agencies responsible for the protection, control and preservation of the State's environment. Increasingly, the Bureau has taken a lead role in multi-state litigation initiatives aimed at protecting the State's air and water from threats that largely originate outside New Hampshire. Most notably, the Bureau filed the first and only state-initiated lawsuit against the manufacturers of MTBE, a gasoline additive that has contaminated surface and ground waters throughout the State, including public and private water supplies. Finally, the Bureau is involved in transactional matters, such as Brownfields redevelopment and bankruptcy proceedings, where its focus is typically to harmonize environmental cleanup and compliance with economic development of old and present industrial sites.

### *MTBE Litigation*

The Bureau filed the first and only statewide lawsuit by an Attorney General to recover damages from oil companies that added methyl tertiary butyl ether (MTBE) to gasoline, causing widespread contamination of the State's waters with a chemical that is costly to find and remove. The State's suit alleges that MTBE has been associated with adverse health consequences and can render water unpalatable, even at very low levels. Because MTBE dissolves easily in water, it travels faster and farther than other gasoline constituents and is more difficult to find and remove, making cleanup more expensive. Although the State has been at

the forefront of adopting strict gasoline storage regulations, the suit alleges, MTBE is still escaping into the environment. Contamination often is not traceable to a particular source or spill and may not even be associated with underground leaks at gas stations.

The lawsuit claims that MTBE's makers and refiners, including ExxonMobil Corporation and Lyondell Chemical Company, have added increasing amounts of MTBE to gasoline even though they knew years ago that it would contaminate water supplies, thus producing a defective product, creating a public nuisance, and violating environmental and consumer protection laws. The State requested all costs associated with addressing the problem and restoring State waters to their original condition, including investigative and cleanup costs, and an assessment of monetary penalties. The State alleges that approximately 60% of New Hampshire's population relies on groundwater wells for drinking water, and that more than 200 public water supplies and 40,000

private wells in New Hampshire contain some level of MTBE.

The State also filed a declaratory judgment action challenging the individual lawsuits filed by two New Hampshire communities against MTBE makers and refiners to recover the same damages sought by the State. That action is pending and is being reviewed on an expedited basis.

### *Environmental Enforcement in New Hampshire*

New Hampshire's environmental laws govern activities ranging from the proper management and disposal of hazardous waste to the filling of wetlands and the construction of docks. These laws fall into three broad areas: protection of the State's waters; prevention of air pollution; and appropriate management of wastes. Environmental laws typically carry a range of enforcement mechanisms, from administrative remedies to civil penalties, injunctive relief, and



*Unpermitted solid waste site in Lempster, New Hampshire, whose clean-up the Environmental Protection Bureau has sought for many years.*

criminal penalties. Working closely with the Department of Environmental Services (DES), the Fish and Game Department (F&G), and other client agencies, the Bureau assesses whether an environmental law was violated and takes an appropriate enforcement response.

### *Environmental Crimes*

During the biennium, the Bureau worked with local law enforcement as well as with the Criminal Investigation Division (CID) of the federal Environmental Protection Agency (EPA) in investigating and prosecuting environmental crimes. The Bureau opened seven new criminal investigations, filed charges in one case, and resolved three cases through the entry of guilty pleas. In several cases, the decision was made not to pursue the case criminally; however, some cases ultimately resulted in civil or administrative enforcement.

In 2003, hotel owner Kevin Craffey and renovation crew foreman Jose Fonseca were indicted on eight felony counts each for exposing workers to asbestos and for conspiring to illegally remove and dispose of asbestos waste stripped from boilers, pipes, and other structures at the Mountain View Grand Hotel in Whitefield during its redevelopment in 2001. Mr. Craffey pled guilty to two felony counts, was sentenced to serve two months at the House of Corrections with an additional 22-month sentence deferred for two years upon his release, ordered to pay a \$150,000 forfeiture to the Asbestos Management and Control Fund, ordered to pay \$82,000 of investigative costs, and complete 150 hours of community service in Coos County. Mr. Fonseca pled guilty to one felony, was sentenced to serve three months at the house of corrections with an additional nine-month sentence deferred for two years upon his release,

ordered to pay a \$4,000 fine, and complete 100 hours of community service.

### *Civil Enforcement of Environmental Laws*

During the biennium, the Bureau opened approximately thirty new civil environmental enforcement matters, most of which led or will lead to filing civil actions in Superior Court. One civil enforcement case and three administrative enforcement cases went to trial or evidentiary hearing. The Bureau entered into formal settlements in twenty-five civil enforcement cases, and collected a total of \$1,071,825 in civil penalties.

In settlements, defendants were required to remedy the violations and any resulting harm, in addition to paying monetary penalties. Under appropriate circumstances, the Bureau allowed defendants to conduct Supplemental Environmental Projects (SEP) in lieu of a portion of the civil penalty. In several cases, defendants agreed to undertake environmentally beneficial projects that went beyond correcting the harm they caused.

#### **Waste**

The Bureau's waste management enforcement cases were brought under the Hazardous Waste Management Act, RSA chapter 147-A and the Solid Waste Management Act, RSA chapter 149-M, as well as the Oil Discharge or Spillage Act, RSA chapter 146-A and the Underground Storage Facilities Act, RSA chapter 146-C.

Hampshire Chemical paid a \$475,000 penalty for violations of the Hazardous Waste Management Act when its Nashua facility, which manufactures inorganic and organic industrial chemicals, discharged acidic, caustic or corrosive wastewater into an open outdoor holding basin. The

State's suit resulted in a finding that it was illegal to store hazardous wastes, which are subject to "cradle to grave" regulation, in an open holding basin. The State also proved that hazardous liquid leaked from a separate storage tank and was pumped into a storm sewer without immediate notification of hazardous waste release to the State.

The Bureau also handled a number of enforcement actions involving leaking underground storage facilities. Through coordination DES and the State filed two civil actions and eight administrative actions against Peterson Petroleum regarding multiple oil releases from its gas stations. Peterson settled for a \$125,000 civil penalty, with \$50,000 suspended. The Alward case, also involving leaking tanks, was settled for \$60,000, with \$35,000 suspended. In the 125 Quickie case, an injunction barring gas sales was issued with the gas station owner later found in contempt for violating the injunction.

On solid waste issues, the Bureau successfully represented DES in an administrative licensing action resulting in the revocation of the solid waste permit issued to Regenesys Corporation. The DES hearing officer concluded that the company made a false and misleading statement when it certified, in conjunction with a permit transfer application, that none of its officers or directors had been convicted of a felony when an officer had been convicted of felony witness tampering. While the officer in question resigned prior to the permit transfer, the company did not inform appropriate regulators of the conviction, the resignation, or other material information relating to the companies involved with the facility. This case is presently on appeal to the Waste Management Council.

The Bureau also brought or concluded several enforcement actions relating to operation of unpermitted solid waste facilities. These included Poisson which settled for a \$60,000 penalty; Howe which settled for a \$5,000 penalty; and Hong Dong Lee with a court order for \$181,500 in penalties both for the initial violations and for failure to comply with an administrative order.

## **Water**

Many of the Bureau's enforcement cases involve the illegal dredging and filling of wetlands or the construction of unpermitted facilities over or adjacent to State waters, both governed by the Dredge and Fill in Wetlands Act, RSA chapter 482-A. Actions were also brought under the Comprehensive Shoreland Protection Act, RSA 483-B, the Water Pollution and Waste Disposal Act, RSA 485-A, and the Safe Drinking Water Act, RSA 485.

In a case against Epiphany Farms, Inc., and Norris Hariman Construction, Inc, the State proved that the defendants illegally transformed approximately twelve acres of forested wetland on the Epiphany Farms property in Wolfeboro by clearing away all trees and other vegetation from the wetland, stumping the land, constructing a lagoon, and dredging and filling throughout the wetland. Under a Consent Decree, the defendants were required to restore twelve acres of forested wetlands, pay a \$100,000 civil penalty, repay \$200,000 that had been spent on site stabilization, and restore all of the affected wetlands on the Epiphany Farms property at an estimated cost of \$400,000.

The Hampshire Hills Racquet and Health Club in Milford paid a \$75,000 civil penalty for dredging and filling approximately 1.8 acres of wetlands and altering about 15 acres of

terrain without a permit. Another case involved Remi-Sons, Inc., the contractor for the Town of Derry, which dredged and filled over 71,000 square feet of wetlands without a permit during the construction of athletic fields. The company agreed to a total penalty of \$100,000 with \$35,000 cash, \$35,000 suspended for two years contingent on no further violations, and an SEP (restoration and remediation of an unrelated site) valued at \$30,000. Other wetlands settlements included DeLong for \$50,000 cash, Guay for \$30,000 cash plus \$20,000 suspended, Lambert for \$20,000 cash plus \$30,000 suspended, and Lund for \$21,000 cash plus \$27,000 suspended.

Some settlements involved the transfer of lands for the purpose of conservation. In the Baker case, the State proved that the defendants engaged in unpermitted work in approximately 10 acres of wetlands ranging from constructing rip-rap and installing drainage pipes, to filling and dredging without a permit. Defendants agreed to a \$20,000 cash penalty, a \$50,000 suspended penalty, transferred a 17-acre parcel to the Nature Conservancy, and restored the affected wetlands. Similarly, in the Levi Ladd case, also involving the alteration of wetlands, the defendant deeded 17 acres of conservation land in Concord to the State.

## **Air**

The Bureau opened four new enforcement matters based on referrals from the Air Resources Division of DES, and settled one air pollution matter. In its case against Pilgrim Foods, the State proved, among other things, that Pilgrim Foods operated a facility located in Greenville without a Title V Operating Permit or State permit to operate, operated the facility in violation of State

law and agency rules, failed to maintain proper documentation, failed to submit required reports, and failed to pay emission based fees. After demonstrating an inability to pay a substantial penalty, the company agreed to pay a \$10,000 cash penalty and to complete a \$90,000 SEP consisting of an environmental audit and replacement of an existing air compressor.

## **License Actions**

The Bureau represented DES and Fish and Game ("F&G") in three evidentiary hearings involving licenses. The Regenes case, which resulted in revocation of a solid waste permit, is discussed above. In addition, the Bureau handled two hunting license actions on behalf of F&G. The Hardwick case involved an application for a hunting license filed by a man whose license had been revoked ten years previously after he accidentally killed a man while hunting. Following a hearing, the F&G Commission denied the applicant a hunting license, but did allow him to engage in bow hunting. Later, in the Laro case, the Bureau argued for revocation of the lifetime hunting license of a man who had accidentally shot and killed another hunter, but had been acquitted of criminal charges. After a hearing, the Commission voted to revoke the license. In September of 2005, the New Hampshire Supreme Court declined to hear Mr. Laro's appeal of the revocation.

## *Agency Counsel and Representation*

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In addition to its enforcement responsibilities, the Bureau also plays a significant role in representing the interests of its client agencies. In situations where client agencies have spent State funds to address environmental or natural resource-related problems, the Bureau pursues



cost recovery against responsible parties. The Bureau recovered a total of \$414,435 in costs. The Bureau also reviewed 1100 agency contracts prior to their submission to Governor and Council. And, the Bureau represents its client agencies in personnel matters and, on occasion, in litigation relating to such matters.

The Bureau reviews and approves property acquisitions, most often for conservation purposes, by client programs including F&G and the Land Conservation and Heritage Investment Program (LCHIP). At times, Bureau attorneys become involved in litigation defending State property interests, as in the Osborne case where the owner of property subject to a conservation easement was unwilling to comply with the terms of the easement.

In the Superfund arena, the State participated in settlements with parties with de minimis responsibility for contaminating the Beede Waste Oil facility in Plaistow with hazardous waste. As part of these settlements, with a combined total of 288 parties, the State received more than \$220,000 toward the costs it has incurred in addressing the site. The process of cleaning up the site and resolving legal liability with the hundreds of remaining parties continues. The Bureau also continues to work with counsel for EPA and the responsible parties in reaching resolution on a number of other Superfund sites within the State.

The Bureau successfully recovered some funds for the State involving rental fees for State-owned hydroelectric dams. The rental agreements provided that payments to the State would be based on the revenue the operators received from power contracts. After PSNH bought out many of the hydroelectric power purchase contracts, the State was left without a major source of

revenue for its dam maintenance program. The State brought suit under the lease agreements and obtained a favorable ruling in the Supreme Court, ultimately settling the cases.

The Bureau defends lawsuits and administrative challenges to the actions of its client agencies, including appeals of environmental permits issued or denied by DES. The Bureau opened approximately 25 new matters representing DES programs in administrative appeals before the Air, Water, Waste and Wetlands Councils, and also continued to represent the agency in previously filed appeals. Several of these matters were appealed.

Most administrative appeals involved challenges to the issuance or denial of permits, sometimes by concerned abutters or citizens' groups, and sometimes by applicants who were not granted the approval they sought. Some of the appeals raised concerns of regulatory significance to DES, such as the interaction between the Shoreland Protection Act, RSA chapter 483-B and other environmental permitting statutes, or the applicability of setback requirements to preexisting septage lagoons.

The Bureau continued to be active in issues surrounding the State's petroleum reimbursement funds for oil discharges and MTBE contamination. The Bureau provides general legal advice to both DES and the Oil Fund Disbursement Board (Board) on issues relating to reimbursement of cleanup costs to eligible owners of petroleum facilities and to public water suppliers with MTBE contamination. The Bureau has represented the Board in settling a number of third party damage claims against petroleum facility owners to which the Board has reimbursement obligations. The Bureau has also advised the Board with regard to funding water main extensions in

several localities where MTBE contamination threatens private water supplies.

The State finalized a covenant not to sue with NEWS, a Cassella-affiliated waste disposal company which will finance capping, closure, and remediation of the Colebrook landfill. The Colebrook Landfill is unlined and is the source of an ongoing hazardous waste release to groundwater which threatens to contaminate Lime Pond, an ecologically significant and unique North Country feature, upon which F&G holds a conservation easement. NEWS may utilize the remaining capacity on the four acre landfill site for which it will pay to Colebrook cash earmarked for the remediation work. The covenant protects NEWS against liability for existing and new contamination but requires that NEWS exercise due care and post nearly \$600,000 in financial assurances to the State to guarantee the groundwater remediation under certain circumstances.

Another significant transactional matter was the Pease Development Authority's acquisition of several large parcels at the former Pease Air Force Base from the federal Department of Defense. Because the property is a Superfund site at which cleanup is ongoing, and because it is the location of a water supply well whose use could impact the cleanup, the acquisition involved a complex negotiation among federal, State, and local entities.

### *Regional Air Initiatives*

The Bureau has played a very active role in regional litigation initiatives to address the unique air pollution problems of the Northeastern states. Prevailing winds carry industrial pollution from the Midwest into New Hampshire, causing serious air quality problems and acid rain that degrades the State's forests,



lakes, and streams, with accompanying impacts on the forestry and tourism economies. Much of this pollution comes from older industrial facilities that lack modern pollution control equipment. Under the federal Clean Air Act, these older facilities may remain in operation, but must install state-of-the-art emission controls when they make modifications that would cause significant air pollution. This requirement is called "New Source Review" (NSR). The State joined in two lawsuits challenging EPA "reforms" to the NSR program alleging they would exempt up to half of major sources from the requirement of installing emission controls when they make facility upgrades. The Bureau succeeded in obtaining a stay of the most significant reform pending a final decision on the merits in federal court.

New Hampshire also took a leading role in challenging EPA's regulations for reducing mercury emissions from power plants. In one suit, New Hampshire and fourteen other states challenged the legal authority EPA relied upon for removing power plants from the list of mercury sources requiring strict, plant-specific standards. A second lawsuit was filed after EPA adopted a cap-and-trade program for power plant emissions of mercury. The states allege that EPA's rules will not reduce mercury emissions from power plants for years to come and do not conform with the Clean Air Act's requirement

that mercury, a potent neurotoxin, be substantially reduced on an expedited basis. Both suits are pending in the United States Court of Appeals for the District of Columbia Circuit.

In related litigation, the Bureau, along with EPA and seven other Northeastern states, continued its active involvement in a citizen suit against an upwind midwestern utility, American Electric Power (AEP), for violation of Clean Air Act requirements and resulting harm to New Hampshire's air quality. The suit alleges that AEP constructed major, life-extending upgrades to eleven of its midwestern coal-fired power plants, and increased emissions that harm the northeastern states without installing state-of-the-art pollution controls as required by the Clean Air Act.

The Bureau also joined in a successful multi-state effort to improve the energy efficiency standards applicable to the manufacturers of air conditioners and heat pumps. In a challenge to a federal Department of Energy effort to roll back efficiency standards for these consumer products, a number of states across the country obtained a federal appellate court order vacating the new standards, which effectively reinstated the more stringent, preexisting efficiency standards. The stricter standards will help improve air quality in New Hampshire by reducing power usage in upwind states.

## *Bankruptcy Matters*

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Most bankruptcy matters affecting State interests were handled by an attorney in the Environmental Protection Bureau. In addition to litigating bankruptcy matters, the bankruptcy attorney devoted considerable time to assisting other attorneys and other agencies in "bankruptcy proofing" settlements, consent decrees, and other transactions.

One case involved USGen who succeeded New England Power Company (NEP) as owner of numerous hydroelectric facilities on the Connecticut River and as purchaser of power from other hydro facilities in the State. It filed a Chapter 11 case in Maryland where the State was named as one of the company's 20 largest creditors based on water user contracts and dam fees owed to DES. The State devoted considerable time to the case to ensure that no water user contracts would be affected by the bankruptcy. The Bureau also assisted outside counsel representing the Upper Connecticut River Mitigation and Enhancement Fund which successfully sought to enforce and retain rights under an agreement previously reached in the context of a Federal Energy Regulatory Commission licensing action between NEP and the States of New Hampshire and Vermont, the U.S. Fish and Wildlife Service, the National Park Service, and a number of non-governmental conservation organizations.

The mission of the Charitable Trusts Unit (the Unit) is to protect the integrity of the charitable sector in the State of New Hampshire through effective registration, education and enforcement. During the biennium, the Unit registered the highest number of charities in its history and the value of the charitable assets in New Hampshire was estimated to exceed \$12.2 billion dollars. The charitable sector in New Hampshire remains strong, diverse and responsive to the growing demands placed upon the sector.

This part of the report starts with a review of significant developments during the biennium and concludes with one of the many charities that is devoted to preserving New Hampshire traditions.

### *Recent Developments*

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Although the charitable sector is now being subject to tough scrutiny nation-wide by the U.S. Senate Finance Committee, the Charitable Trusts Unit in New Hampshire began a collaborative joint venture with major New Hampshire charities to promote greater self-scrutiny and self-reform by those charities operating in this state. The Unit has also expanded its efforts to educate charities in this state on their fiduciary obligations and has helped conduct seven “listening sessions” throughout the state to discuss ethical and legal issues.

During the biennium, the Unit dealt with a series of significant nonprofit matters, including (a) legislation requiring the largest charities to make their audited financial statements available to the public and legislation adopting a major new Uniform Trust Code; (b) cooperation with the Legislature on issues relating to

nonprofit gambling statutes; (c) scrutiny of legal issues relating to St. Paul’s School; (d) obtaining major funding to review compliance with and consider initiatives relating to the state’s community benefits statute; and (e) scrutiny of the mergers and consolidations of nonprofit health entities.

### **Metrics: The Upward Trajectory Uninterrupted**

The number of charities registering with the Unit reached the highest levels ever during the biennium. As of June 30, 2005, the total number of charitable trusts registered in New Hampshire was 5,811, a figure that does not include testamentary trusts (of which there were approximately 500 registered). Consequently, the proliferation of charities that began in the mid-1990’s continues its upward trajectory uninterrupted. This proliferation points to a healthy, diverse and dynamic sector in the state.

The value of the registered charities native to New Hampshire is estimated by the Urban Institute to be \$12.2 billion dollars. This figure is conservative, however, and does not include the value of assets held by religious organizations, municipal trusts, and the smallest charities in this state, all of which would significantly increase the valuation of charitable assets well beyond \$12.2 billion.

The Unit is now staffed with one attorney (the Director of Charitable Trusts), one registrar, one paralegal, one administrative assistant and one records control clerk.

### **Outreach**

Educational Initiatives (a Growing Imperative). Given the continued proliferation of charities under its scrutiny, the Unit has increased its commitment to educating the charitable sector

on legal compliance, ethical behavior, excessive compensation, internal controls, and other major issues. The Unit has engaged the public in a variety of ways, including:

1. educational forums for the trustees of cities and towns;
2. sessions sponsored by the New Hampshire Bar Association or the National Association of Attorneys General (NAAG) on the newly-adopted Uniform Trust Code, End-of-Life issues, and charitable regulation generally;
3. workshops offered with the New Hampshire Center for Nonprofits, the Governor’s Annual Conference on Volunteerism, the United Way, and the National Business Institute, among others; and
4. articles in the *New Hampshire Bar Journal* and the *Nonprofit Quarterly*, dealing with Sarbanes-Oxley and the recommendations being made to the United States Congress for reform of the charitable sector.

Members of the Unit have met with the CEOs, governing boards and staff members of nonprofit entities to discuss fiduciary responsibilities, community benefits, governance and other issues. In addition, the Unit participated in one of the workgroups organized by Independent Sector that submitted its report to U.S. Senate Finance Committee. The full report is available at [www.independentsector.org](http://www.independentsector.org).

### **The Excellence in Governance Project**

The Unit cooperated in a joint venture with the New Hampshire Charitable Foundation and 20 other major New Hampshire

charities to discuss legal and ethical issues—and how to help the charitable sector achieve excellence in this state. The 21-member work group held 7 listening sessions throughout the state, prepared a legal compliance checklist for charities, and published a new “Guidebook for Directors and Officers” for distribution throughout the state. This initiative was included in the report made by Independent Sector to the U.S. Senate Finance Committee, referenced above.

### Statutory Mandates

The laws governing charitable trusts in New Hampshire are complex and the chart to the right is a general representation of some of the major laws.

The Director of Charitable Trusts (the Director) is responsible for the supervision and enforcement of charitable trusts and charitable solicitations. The Director is a necessary party to all judicial proceedings that affect the purposes of a charitable organization, whether in Probate Court or Superior Court.

In terms of statutory mandates the principal functions of the Unit include:

- Enforcement of charitable trusts in New Hampshire under the authority of RSA 7:19-32 and the common law;
- Review all healthcare mergers and acquisitions involving non-profit institutions (RSA 7:19-b);
- Licensing of professional fundraisers soliciting donations from New Hampshire citizens for charitable purposes (RSA 7:28);
- Enforcement of games of chance (RSA 287-D);
- Monitoring the issuance of charitable gift annuities (RSA 403-E);
- Cooperating with the Pari-Mutuel Commission in enforcing

the gaming laws relating to Bingo and Lucky 7's;

- Cooperating with the Criminal Bureau in investigating allegations of criminal activities by officers and directors of charitable trusts.

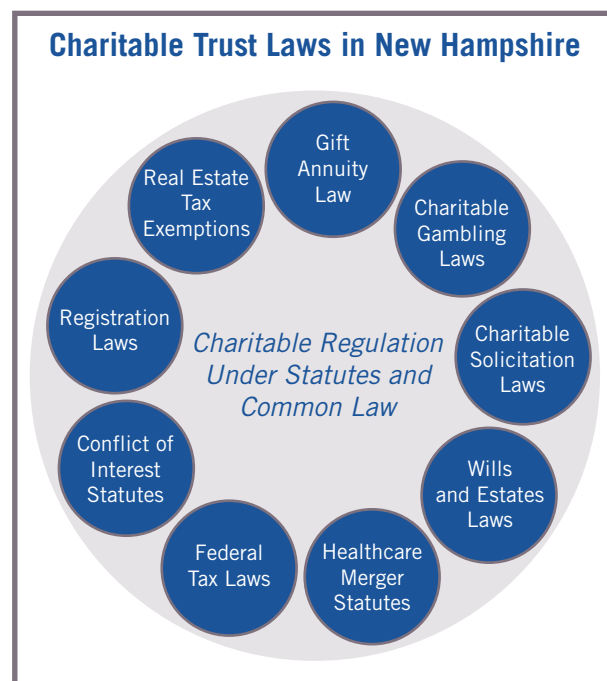
## Major Transactions

### Healthcare Issues

The Unit devoted substantial resources during the biennium to a number of nonprofit healthcare entities engaged in restructuring and redirecting their charitable missions, including (1) the affiliation of New London Hospital with Dartmouth Alliance; (2) the restructuring of Hillcrest Terrace and Pearl Manor, facilities that provide independent living, assisted living and nursing care to the elderly; and (3) monitoring the post-merger financial condition of the Lakes Region and Franklin Hospitals. The Unit was also actively involved in the Healthcare Decisions Coalition that reviewed both the living wills and healthcare directives in this state and recommended legislative action.

### Other Charitable Transactions

The Unit is mandated to appear as a necessary party in the ten Probate Courts in New Hampshire on charitable trust issues. During the reporting period, a number of these cases involved novel or significant issues, including the following: (1) the sale of the assets of St. Francis Xavier Catholic Church in Nashua. (2) Voices United in Truth, a case in Portsmouth involving charitable assets and alleged breaches of fiduciary duties; (3) Advanced Marketing Consultants, a case involving fundraising professionals and compliance with New Hampshire solicitation statutes; (4) New Hampshire Institute of Art/Settlement House, involving the dissolution of the Settlement House organization and the



transfer of the entity's building to the New Hampshire Institute of Art; (5) Barnard Free School (a cy pres of the original, but now obsolete, Barnard School building and rental to the Town of South Hampton; (6) Andrew Downes Estate (mediation of issues involving trust and estate documents resulting in \$10,100 being donated to the Salvation Army); and (7) Merriman Estate/Dresden School District (gift given to the District to construct athletic fields).

### Technology

The Unit has installed the FileNet system and is now in the process of scanning financial reports into the Unit's database. The ultimate goal of the FileNet system is to make scanned images of the financial reports, community benefits reports, and other information relating to charitable organizations available to the public on the Internet. The Unit has two additional information technology projects in process: (1) The NASCONet system that is being designed as an interactive informational site for and about charitable organizations and fundraising in the United States. Development of NASCONet has been made

possible through a grant from the United States Department of Commerce; and (2) the Fed/State Retrieval Project representing collaboration between state charity officials and the Internal Revenue Service for the purpose of developing a system which will permit the electronic filing of registration and reporting forms by charitable organizations on a state and national level.

### **Legislative Initiatives**

The Unit was involved in the working group that prepared a major rewriting of the state's trust laws (the Uniform Trust Code) that was enacted, effective 2004. The Unit was also involved in the End-of-Life work group established by the National Association of Attorneys General (NAAG) and participated in the Healthcare Directives Coalition mentioned earlier. Finally, in 2004 the Legislature enacted a statute requiring that audited financial statements be submitted to the Unit annually by those charities with revenue of \$1,000,000 or more. The Unit prepared a mailing to approximately 500 such organizations, advising them of the new legislative mandate and providing guidance to help those entities comply.

### **Interagency Collaboration**

The Unit continues to collaborate with the Department of Health and Human Services in identifying emerging trends in public health care in the state. This Interagency Work Group is now in its fifth year of the collaborative effort; and it recently received a major grant to help implement the community benefits statute.

### ***Civil Enforcement.***

The Unit has the power under RSA 7:24 and 7:25 to issue Notices to Attend Investigation whenever a question arises regarding the operation of a char-

ity. During the biennium, the Unit issued 31 Notices and conducted 16 hearings, for a variety of reasons, including failure to register or failure to report or failure to comply with RSA 31:28 or 287: D-5. The Unit referred 6 cases to the Criminal Bureau during the relevant period, resulting thus far in one indictment.

The Unit's work includes enforcement of the charitable solicitation law. During fiscal year 2005, the Unit reviewed 385 solicitation notices and registered 175 professional fundraisers. During fiscal year 2004, the Unit reviewed 396 solicitation notices and registered 163 professional fundraisers.

### ***Registration and Licensing***

In fiscal year 2005, the Unit collected \$411,433 in registration and filing fees from charitable trusts and \$126,275 in filing fees from professional fundraisers. In fiscal year 2004, the Unit collected \$389,890 in registration and filing fees from charitable trusts and \$123,263 in filing fees from professional fundraisers.

By the end of the reporting period, there were 5,811 charities and 500 testamentary trusts registered with the Unit. During fiscal year 2004, the Unit reviewed 4,108 annual reports filed by charities and 365 probate accounts filed by testamentary trusts. During this period, reports were received from the 243 towns and cities having custody of trust funds for the benefit of cemeteries, libraries, parks, and other public purposes. These reports were reviewed to ensure compliance with applicable statutes.

The Unit works with the Pari-Mutuel Commission to enforce the Bingo and Lucky 7 statutes. As part of its application review, the Commission ensures the charities involved are registered

with the Unit. This involves monthly reports from the Unit to the Commission and frequent telephone contact between the two state entities.

In 1998, RSA 287-D was amended to include the Attorney General in the process of issuing games of chance permits. During fiscal year 2004, the Unit reviewed 111 applications filed pursuant to RSA 287-D and issued 106 letters of approval. During fiscal year 2005, the Unit reviewed 225 new applications and issued 225 letters of approval.

### ***Litigation and Estates.***

The Director is a necessary party in any litigation involving charitable trusts. During fiscal year 2004, the Unit opened 43 cases. In fiscal year 2005, 72 new cases were opened. These cases range from extensive involvement by the Unit to monitoring the case for status and developments. They include reformation of trust instruments, removal of trustees, determination of beneficiaries, petitions for cy pres, and investigations into allegations of wrongdoing by charities and their officers, directors and professional fundraisers, as well as the various cases mentioned earlier in this report.

Pursuant to statutes and court rules, the ten Probate Courts send the Unit a copy of any will that mentions a charity or trust. These wills are reviewed and information is entered into the Unit's database. When the estate is closed and distributions are made to the charities, that information is also entered into the database, making it easier to retrieve financial information as well to satisfy requests from charities regarding their responsibilities in holding trust funds. In fiscal year 2005, the Unit processed 307 wills and recorded \$28,603,042 in bequests to charity.





### **Preserving New Hampshire Traditions**

The Poore Family Foundation is a 501(c)(3) organization that was created in July 1978, with the charitable purpose of preserving the traditional values and way of life of the settlers of the headwaters of the Connecticut River Valley. J.C. Kenneth Poore gave his homestead, barn, farm machinery, tools and 100 acres of land to the Foundation. The Foundation has turned the premises into a museum depicting what life was like for the early settlers. Many events, including school tours, apple cider pressings, and ice cream socials take place in these old buildings. The Poore Family Foundation may be accessed at [www.poorefamily.homestead.com](http://www.poorefamily.homestead.com).

The Civil Law Bureau (Civil) acts as legal counsel for 114 executive branch agencies, boards, commissions and councils. It provides legal advice and representation to 38 state agencies, many of which have multiple divisions with varied duties and functions. In addition to the state agencies, Civil also provides legal advice and representation to 53 licensing/regulatory boards and 23 councils/commissions. There are 14 attorneys, 3 of whom are part-time, 2 part-time contract attorneys, 2 paralegals and 4 secretaries. Each attorney is assigned to assist a variety of the client agencies.

In 1999 Civil formed a sub-unit within the bureau to handle the increased number of complex federal cases. The Federal Litigation Unit (FLU) is staffed by an Associate Attorney General, three attorneys, a secretary and a paralegal. The FLU attorneys specialize in federal court procedure. The Attorney General's Office has a permanent seat on the Federal Court Advisory Committee that makes recommendations to the United States District Court on policy and local rules.

Civil handles trial and appellate court litigation for all its clients, provides legal advice through formal written opinions, informal memos and by telephone - frequently on a daily basis. Unlike private law offices, however, Civil has no control over the amount of work that comes through the door. Civil continues to see a marked increase in both the number and complexity of cases and legal issues.

Civil is a dynamic bureau with a large variety of challenging legal issues. In any given week, a Civil attorney may be arguing a First Amendment case in federal court, defending an agency and

its employees in state court, researching a question of law for an agency, preparing a response to a lawsuit against the State in Superior Court, advising an administrative licensing board or briefing and arguing a case in the New Hampshire Supreme Court.

### *Litigation*

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Civil has become primarily a litigation unit rather than the legal advisor it had been in prior years. Approximately sixty-three percent (63%) of Civil's legal practice time is now devoted to litigation. Eighty-three percent (83%) is trial court litigation and seventeen percent (17%) is appellate litigation. Over the last two years, approximately 300 new lawsuits and claims were filed in both state and federal courts against the State and individual state officials and/or employees. Civil attorneys also worked on hundreds of other litigation matters still active from prior years. During the biennium, 34 cases were settled and many cases were resolved judicially. The nature and complexity of the litigation varied significantly. Some cases were resolved in a few months through written motions to the court. Other more complex litigation will take a number of years to resolve and may span the biennium and beyond and may also include both a trial and an appeal.

### **School Funding**

In the case of *Baines, et al. v. Eaton*, filed in July, 2004, plaintiffs challenged the constitutionality of the enactment of 2004 New Hampshire Laws Chapter 200, the State's then-current school funding law, by alleging that the Legislature could not pass a money bill in a Senate Bill, that the Legislature did not follow its own internal rules in

enacting this law, and that the enrolled bill amendment used to make technical corrections to the law was unlawful. The State defended against these claims and on April 20, 2004 received a decision upholding the authority of the Legislature to determine its internal procedures, as long as the procedures do not overrule constitutional requirements. The Court also declined to review Legislature's procedures, holding that the corrections made to Chapter 200 were technical corrections and finding the passage of Chapter 200 to be valid.

### **Diocese of Manchester**

In 2004 both the Civil and Criminal Bureaus became involved in protracted litigation with the Diocese of Manchester (the Diocese). This litigation arose out of the 2002 criminal investigation by the Criminal Bureau into the conduct of the Diocese regarding the manner in which it responded to allegations that some of its priests had engaged in sexual misconduct with children. A grand jury investigation was initiated and the Criminal Bureau was poised to indict the Diocese on the charge of child endangerment. During the pendency of these proceedings the State and the Diocese entered into a non-prosecution agreement that provided a framework for the protection of children to a greater extent than could be realized by a possible prosecution of the Diocese for child endangerment. In the agreement the Diocese acknowledged that certain decisions it made about the assignment of priests who had abused children resulted in other children being victimized and that the State had evidence likely to sustain a conviction against it. The Diocese agreed to implement policies and procedures that would protect

children from sexual abuse by the clergy.

One of the key elements of the non-prosecution agreement was the State's ability to perform an annual audit for a four-year period to ensure that the Diocese had implemented these policies and that they worked to protect children. The Diocese objected to the scope of the State's planned audit and asserted that the State was completely responsible for the cost of the audit. The parties began an almost year long period of litigation to resolve the parties differing interpretation of the non-prosecution agreement. Because this litigation involved interpretation of a contract, attorneys from the Civil Bureau became involved. In March 2005 the Hillsborough County Superior Court ruled in the State's favor, finding that the audit provision of the agreement gives the State the authority to conduct an audit that fully analyzes whether the Diocese's policies are working and protect children in an effective manner. The court also ruled that the parties must equally share the costs of the audit. The first year of the audit began in June 2005 and is on-going.

#### **In re: Liquidation of The Home Insurance Company**

This case is a multi-billion dollar insurance liquidation proceeding commenced in State Superior Court in 2003. The court appointed the Insurance Commissioner as Liquidator to oversee the processing and disposition of claims by policyholders, claimants and creditors of the estate. The liquidation has given rise to several related lawsuits, including cases in the United States District Court, the First Circuit Court of Appeals, Merrimack County Superior Court and the New Hampshire Supreme Court. In one such case filed in 2003, a class of tort claimants challenged the constitutionality of a provision

of the State insurance liquidation statute that allows third party claimants to file claims against the bankrupt insurer but requires the claimants to release the policyholder up to the limits of the insurance policy. The Superior Court upheld the constitutionality of the statute, and the case remains pending on appeal. Given the size and scope of the liquidation proceedings and related cases, the liquidation has required the attention of at least one attorney on a virtually full time basis since its inception.

#### **Class Action Lawsuits**

During the last biennium civil attorneys were involved in four very complex class action lawsuits in both federal and state courts. Two of these cases involve defense of the Department of Health and Human Services' (DHHS) implementation of home and community based care for persons with acquired brain disorders and developmental disabilities.

For example, in *Bryson et al. v. Commissioner et al.*, a group of individuals with acquired brain disorders (or brain injuries) challenged the State's administration of its Medicaid home and community based care waiver for persons with acquired brain disorders. The plaintiffs were individuals who were on a waiting list for services funded by the waiver. The plaintiffs' claims included alleged violations of the Federal Medicaid Act, the Americans with Disabilities Act (ADA), and the Due Process Clause of the United States Constitution. In December 2001, the United States District Court granted declaratory judgment to the class on the Medicaid Act claims, and the State appealed. In 2002, the First Circuit Court of Appeals reversed, holding that Medicaid law allows the State to impose a cap on the size of its waiver program. The case was remanded to the District Court,

where it remains pending. The District Court denied the State's motion for summary judgment on the ADA claims and the matter was tried in federal district court in October 2005. A decision is expected in 2006.

#### **Tax Litigation**

There were several significant tax cases where civil attorneys defended the State's financial interests. In the pending case of *General Electric Company, Inc. v. Commissioner, NH Dept. of Revenue*, GE challenges a provision of the business profits tax statute (RSA 77-A:4, IV). GE appealed a decision from the Commissioner of the Department of Revenue to the superior court claiming that the dividends received deduction allowed under RSA 77-A:4, IV should be invalidated because the statute discriminates against foreign commerce in violation of the commerce clause of the United States Constitution and results in unfair taxation out of proportion to GE's activities in New Hampshire in violation of the Due Process and Commerce Clauses of the U.S. Constitution. In April 2005 the Merrimack County Superior Court held oral argument on the parties' pending motions, including the State's Motion to Dismiss and Motion for Summary Judgment. On August 19, 2005, the court dismissed GE's case granting both the State's motions. GE has filed a motion for clarification and reconsideration. The case will likely be appealed to the New Hampshire Supreme Court.

In *Smith v. Ayotte*, residents of Hollis and Hudson challenged the process of assessing the value of homes. Specifically, New Hampshire law allows assessors to enter property for the purpose of determining its assessed value. If a homeowner does not wish to have an assessor enter the property, the homeowner loses the right to appeal any subsequent assessment. This was challenged

in federal court on constitutional grounds. The federal court dismissed the case on jurisdictional grounds and further stated that there was nothing unreasonable about the process.

### Inmate Litigation

The Department of Corrections is one of Civil's largest clients. It requires significant legal counsel time and accounts for 16% of the Bureau's legal practice time. In addition to the lawsuits filed in both federal and state courts, inmates also regularly file petitions for writs of habeas corpus in state court claiming that they are being held in prison unlawfully. Seventy petitions were filed during the biennium. The State prevailed in the overwhelming majority of these cases. Habeas corpus petitions are usually resolved within a month after submission of a written pleading and a hearing in superior court.

### Appellate Litigation

Under RSA 7:6 the Attorney General must act as attorney for the State in all civil cases

in the Supreme Court where the State has an interest. In January 2004, the Supreme Court amended its rules and implemented a mandatory appeal system. This change has dramatically increased the Bureau's appellate practice. In 2003, the year before the mandatory appeal process was implemented, Civil filed twenty-three briefs in the Supreme Court. In fiscal year 2005, the first full year of mandatory appeals, Civil submitted forty-three briefs. This increased Civil's Bureau's appellate work by eighty-seven percent (87%). Under this new rule the Supreme Court accepts all appeals from a final decision on the merits issued by a superior court, district court, probate court or family division court. Prior to 2004 the Supreme Court had discretion to accept or deny civil appeals.

During the biennium, Civil filed a total of ninety-four appellate briefs. Seventy-eight (78) briefs were filed in the New Hampshire Supreme Court. Seventy-five (75) were in defense of State action and three (3) were State appeals. Approximately

thirty-five percent (35%) of the briefs in defense of state action involved appeals of abuse and neglect or termination of parental rights cases.

Federal appellate work accounted for a smaller portion of Civil's caseload. Fifteen (15) briefs were filed in the First Circuit Court of Appeals and one (1) brief

was filed in the United States Supreme Court.

### Election Law

The Civil Bureau has responsibility for the Attorney General's duties related to election law enforcement and provides legal counsel to the Secretary of State, who administers elections statewide. Bureau attorneys defend the State or the Secretary of State in actions before the Ballot Law Commission, Superior Court and the Supreme Court. Approximately seven percent of the bureau's efforts address election law related legal issues. There were also two notable cases involving election law that were filed during the biennium.

### Election Day

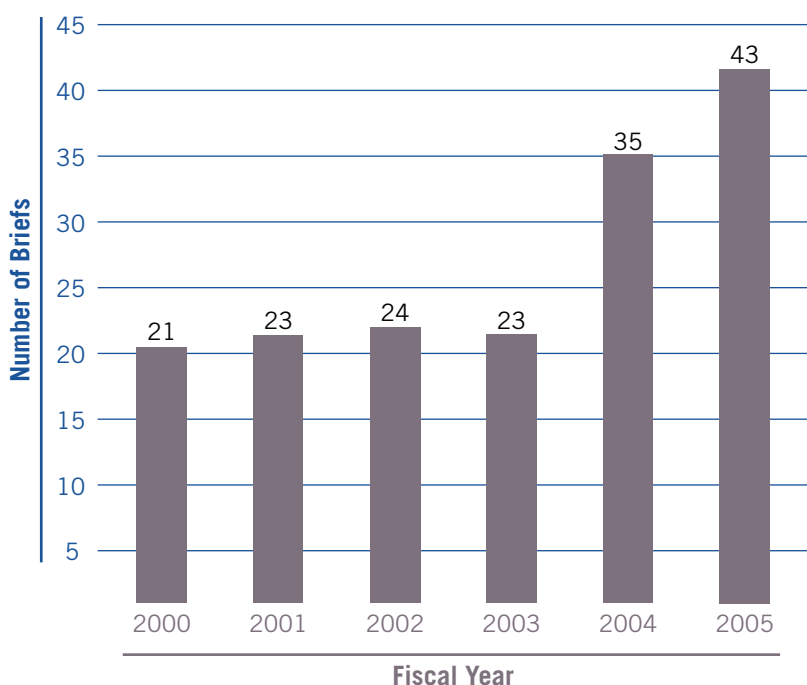
On each statewide Election Day the Attorney General's office uses all available attorneys, investigators, and at recent elections specially trained sheriff's deputies, to conduct on-site inspections of polling places throughout the state. Generally, the office is able to have a representative of our office at most polling places within 30 minutes following the receipt of a complaint. At the November 2, 2004 general election approximately 400 phone calls were received on the Attorney General's Election Line, a toll-free election phone line maintained by the office. Several complaints required attorneys or investigators to go to polling places to investigate complaints or resolve problems. At the Presidential Primary and at the General Election attorneys staffed the polling places in several college towns, remaining available throughout the day to address concerns with voter fraud or denial of voting.

### Enforcement Activities

The Attorney General's Office is the primary law enforcement agency for election law violations. The Office receives and

### Civil Bureau Supreme Court Briefs

Fiscal Years 2000–2005





investigates complaints regarding state and local elections, town, school and village district meetings, and other election law violations. The volume of complaints is highest during the presidential election period, but even in off years it is common to receive 100 or more complaints that warrant some inquiry or investigation. The Office is currently examining a significant number of voters who have been identified by concerned citizens who suspect voter fraud or election law violations at the November 2004 General Election. No evidence of widespread voting fraud has yet been found. To date one case has resulted in a criminal conviction and one in a civil sanction.

This Office also handles a significant number of complaints each year related to local elections, as well as town or school meetings irregularities. Issues range from denial of paper ballot votes during a business meeting or miscounting of ballots to denial of the right to vote. The Bureau works closely with the local election officials to try to prevent law violations and where practical uses an educational approach to deter future law violations.

#### **Help America Vote Act (HAVA)**

HAVA has imposed a significant new demand on Civil. HAVA requires the State to:

- Provide at least one voting machine in each polling place to enable most voters with disabilities to vote privately and independently;
- Create a new uniform centralized statewide database of registered voters that shall be the source for the official checklist for each town and city;
- Assist towns and cities in ensuring their polling places are accessible for people with disabilities and the elderly;

- Ensure each qualified individual has an equal right to register and vote through statewide uniform election procedures and standards;
- Provide voter and election official education; and,
- Maintain a statewide complaint system for the uniform, nondiscriminatory investigation and resolution of complaints.

Significant attorney time has been required to fulfill the obligations imposed on this Office described above. This Office has also worked closely with the Secretary of State, providing legal advice throughout the acquisition and development of the statewide database of registered voters, the ongoing acquisition of technology to assist voters with disabilities and in developing and presenting the required training. HAVA will continue to demand a significant number of attorney hours while these new programs are implemented, local election officials are trained, and enforcement efforts are undertaken to ensure compliance with federal law.

#### **Polling Place Accessibility**

In fulfillment of the obligations imposed by HAVA and as part of an ongoing effort to enforce Part 1, Article 11 of the New Hampshire Constitution, which requires that polling places be accessible, during the biennium this Office has conducted inspections of over 300 polling places in the State. With the assistance of deputy sheriffs from every county in the State an initial survey of all polling places was completed. Where possible deficiencies were identified, attorneys worked with specialists who conducted more extensive re-inspections and worked with local officials to identify practical solutions to accessibility deficiencies.

#### **Campaign Contributions & Expenditures, Gift Reports, Lobbyist Reports, Ethics Reports**

The elections attorneys also carry out the Attorney General's statutory duties to examine and ensure that voluminous public disclosures related to campaign finance, gifts to public officials or employees, lobbyist income and expense reports, and ethics reports comply with the law.

#### **Educational Activities**

The Attorney General's Office believes that prevention is the most cost effective form of law enforcement. In cooperation with the Secretary of State, attorneys from the Bureau routinely conduct or support training for local government officials and the public on the election laws. During this biennium, attorneys working with the Secretary of State presented an election law update and training on the proper conduct of elections to over 1500 local election officials through a four-hour class presented more than twenty times at different locations. Attorneys helped develop "How to Vote" and "Polling Place Accessibility" videos and other voter education programs which have been distributed to local election officials and are available on the Secretary of State's web site. Attorneys have worked with the Secretary of State in developing voter education materials and signs for display on Election Day at the polling places. Signs displaying the toll free Attorney General's Election-Line phone number are provided to each polling place by the Secretary of State. Shortly before the General Election, this Office issued all Moderators and Town Clerks a 22-page checklist of legal issues expected to surface at the general election. Special training sessions for moderators have also been conducted regionally.

## Election Litigation

There were two significant election law cases litigated during the biennium. In the case of *Aikins v. Secretary of State*, the plaintiffs challenged the constitutionality of the statute that specifies the relative position of candidates and the political parties with which they are affiliated on the general election ballot. The plaintiffs argued that the current statute, which gives first position to the candidates of the party that received the most votes in the prior election, gives those candidates an impermissible advantage. They asked the Court to impose some form of name and party columns rotation on ballots and/or random selection of which candidate or party is placed in the first position. The State argued that it has a compelling interest in presenting voters with a clear and easily understood ballot and that determining ballot structure is a prerogative of the Legislature. The Superior Court ruled that the statute is constitutional. This decision is subject to appeal.

*Libertarian Party v. State of New Hampshire* involved a challenge to the constitutionality of statutes that require third parties or independent candidates to demonstrate a minimal level of support, by obtaining petitions signed by a certain number of voters, in order to have their names placed on the ballot. The Plaintiffs alleged that this burden violated the “equal right to be elected” and the equal protection clauses of the New Hampshire Constitution. The State argued that the State has a compelling interest in keeping the ballot free from confusing or deceptive or frivolous candidates and that this issue is settled under the federal constitution with courts consistently upholding more onerous ballot access requirements than those imposed by New Hampshire law. The Superior Court ruled in the

State’s favor and dismissed the claim. The case is currently on appeal to the New Hampshire Supreme Court.

## Legal Advice And Assistance

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Providing legal advice to state agencies, boards and commissions is a core function of Civil and represents approximately 37% of attorney legal practice time for the biennium. Agencies require legal assistance interpreting and implementing the laws that define their obligations. The type of legal assistance varies depending on the nature of the issue. Some questions have broad applicability throughout state government, involve significant legal research and require a written analysis by the assigned attorney. Other questions can be answered by a brief memo to the agency. Civil attorneys also consult with their clients informally and frequently through telephone contact or e-mail. The goal is to be accessible to the client agencies and provide them with the legal tools they need to carry out their mission.

## Land Conservation

The Legislature charged the State to protect land, through purchases of conservation easements or fee interest, in order to sustain traditional forest uses, such as logging; ensure multiple use conservation purposes, such as limiting development but allowing public access for recreational use; and protect and sustain traditional agricultural uses. Recently the Civil attorneys assisted with conserving more than 203,000 acres of land in the state through several conservation projects including: 962 acres in Dunbarton known as “Kimball Pond,” 18,430 acres in Columbia and Stratford known as the “Vickie Bunnell Tract,” 10,198 acres in Jefferson and Randolph known as the “Pond

of Safety Tract,” 5,316 acres in Errol and Cambridge known as “13 Mile Woods,” 5,300 acres in Freedom and Madison known as “Trout Pond,” and last, but by far not least, a conservation easement and fee interests in 172,000 acres in Pittsburg, Clarksville, and Stewartstown known as the “Connecticut Lakes Headwaters property.”

The Connecticut Lakes Headwaters property is considered an integral piece of the Northern Forest which consists of 31 million acres that stretch across Maine, New Hampshire, Vermont, New York, and southern Canada. On December 30, 2002, three portions of this property, totaling approximately 25,000 acres, were acquired by the Fish and Game Department in fee and became known as “the Natural Areas.” On October 10, 2003, the Department of Resources and Economic Development (DRED) acquired a conservation easement over 146,400 acres, which are owned by a private timber company, to limit development on the property, to ensure continuation of traditional forest uses, and to ensure public access, both motorized and non-motorized, for recreational uses on the property. DRED also acquired 100 acres in fee to increase the size of Deer Mountain Campground, 8.45 acres in fee for the Magalloway Mountain Fire Lookout Tower, and 3,264 acres in fee for all of the roads on the property that are open for public use.

Civil attorneys also worked with the Department of Agriculture, Food and Markets which acquires and manages agricultural land preservation easements. New Hampshire, like many other states, is facing population growth resulting in the development of large tracts of land traditionally used for agricultural purposes. In order to protect some of these properties, the Legislature established the

Agricultural Land Preservation Committee and authorized it to purchase or accept gifts of easements that preserve land for agricultural uses.

While creating and defending against violations of conservation easements takes significant attorney time, the negotiations and drafting of the documents to acquire the Connecticut Lakes Headwater property took more than two years. The benefits to the State, and the Northeast, as a result of the conservation of these properties will continue for generations to come.

### **Representation Of Professional Licensing Boards**

The Bureau represents and provides legal advice to licensing boards and other executive branch agencies whose statutory duties include adjudicative, prosecutorial and investigative functions. These boards are comprised primarily of volunteers from the licensed professions. The role of civil attorneys is to

assist each board to effectively and lawfully carry out their statutory duties.

In an effort to provide broad support for the boards, the Civil and Consumer Protection Bureaus have presented annual training seminars for board members and staff. Training topics include writing orders, ethical issues, how to conduct an administrative hearing, the applicability of the Right-To-Know Law, principles of due process and mock hearings. The goal of the bureau's work with the boards is to ensure due process, prevent problems from occurring and minimizing the potential for appeals by assisting boards in the earliest stages of proceedings.

A recent trend is the increased complexity and litigious nature of the proceedings before the boards. Parties to contested cases are now more likely to be represented by counsel, file more sophisticated motions and demand more extensive discovery—resulting in longer hearings.

### **Contract Review**

Review of contracts and leases is an important aspect of providing legal assistance to state agencies. Over the last two-year period Civil reviewed and approved more than 3500 contracts and leases. A large proportion of these contracts are reviewed and returned to the agencies within one week. All executive branch agencies submit contracts and leases to their assigned attorney for review to ensure legal sufficiency prior to submission to Governor and Council. In addition to reviewing final contract documents, attorneys also frequently consult with agency staff regarding contract and bid related questions. Civil attorneys also assist state agencies with Information Technology procurement projects and review numerous Information Technology contracts. The complexities of these contracts have required substantial legal resources.

The Transportation Law Bureau (Bureau) acts as legal counsel for the New Hampshire Department of Transportation (NHDOT). The Bureau represents the NHDOT in eminent domain, real estate, contract, construction, administrative, personnel and personal injury cases related to the State's transportation systems and public works projects. The Bureau provides the NHDOT with general legal advice on a broad range of transactions and civil proceedings. Its role encompasses a wide range of trial and appellate advocacy in state and federal courts, as well as administrative law before a variety of boards. The legal workload generated by the breadth of the NHDOT's responsibilities resulted in 325 new files being opened by the Bureau during the two-year period. At the same time, the Bureau resolved 239 matters. The Bureau performed legal roles in major projects, including the Conway Bypass, Keene Bypass, Manchester Airport Access Road, the Granite Street Extension, the implementation of E-ZPass, and the I-93 Expansion Project, as well as a multitude of smaller projects throughout the State.

### *Eminent Domain*

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Land acquisitions continue to be a central function of the Bureau. Prior to condemnation, the Bureau routinely advises the NHDOT on land title issues, document preparation and legal issues effecting the proper valuation for the acquisition of property necessary for transportation improvements. After the initiation of eminent domain proceedings, the Bureau represents the State during the litigation striving to reach a fair and equitable resolution to the takings. The eminent domain process remains an essential tool in completing the public projects necessary to

improve the safety and efficiency of the State's transportation network. During the last biennium, an additional 70 new eminent domain cases were opened and 51 were resolved.

Although the number of condemnation actions has remained relatively stable for the last two bienniums, that belies the increasing complexity of the State's acquisitions. For example, this biennium saw the State acquire an entire timeshare condominium complex, Cranmore Place Condominiums, the first eminent domain action of its kind in the nation. Because 11 condominium units at Cranmore Place were broken into 52 separate weeks of ownership, more than 550 separate unit owners interests had to be acquired. This presented groundbreaking challenges in title research, document drafting and valuation. With the acquisition now complete, substantial valuation issues remain to be resolved. Because no other state has acquired a timeshare complex, each issue has presented new challenges that no other jurisdiction has yet confronted.

The State continues to acquire many contaminated properties which also pose unique legal issues. The State's past approach of treating the properties as clean and attempting to recoup the cleanup costs later has long proved unsatisfactory. With the Bureau's encouragement, the State now values the contaminated properties as an ordinary buyer would and is paying appropriate fair market value for the parcel in its actual contaminated condition. This process prevents owners of contaminated land from receiving windfalls and leaving the public with the bills for the owner's past misdeeds.

The I-93 Project presents challenges with extraordinarily high commercial valuations and complex development analysis affecting the properties being acquired. These factors have required the Bureau's involvement earlier in the acquisition process than normal for several high value properties.

Recently, the New Hampshire Supreme Court decided a significant eminent domain case in *State v. Daly, et al.* Landowners in Conway had sought compensation from the State through the eminent domain process for damages that allegedly occurred to their property when the Town enacted new zoning ordinances in response to the State's proposed Conway Bypass Project. The Supreme Court dismissed the condemnees' claims against the State holding that the damages sought were caused by the Town of Conway, not the State. Therefore, any compensation had to be addressed through the local zoning process. An adverse decision would have dramatically increased the Project's costs by tens of millions of dollars.

### *Environmental and Legal Challenges to Major Projects*

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The State's transportation improvement projects have encountered diverse legal challenges, which threaten their completion. A concerted effort by a few abutters along the Route 16 commercial strip in Conway, New Hampshire, which endangered completion of Phase 5A of the Conway Bypass Project, was defeated in a recent Supreme Court decision. Environmental challenges to transportation improvement projects continued throughout the biennium, with more anticipated. The Conservation Law Foundation (CLF) filed actions against the



State wetland permits for the Keene-Swanzey and Troy Bypasses. The Bureau successfully defended both projects, though each has subsequently been scaled back due to other considerations. The Manchester Airport Access Road has received its final approvals and legal challenges were withdrawn.

The legal issues related to the environmental permitting for the I-93 Expansion Project have occupied significant Bureau time as the project nears its final federal approvals. Significant attorney time has been spent reviewing and preparing the appropriate legal documents to meet the federal requirements for permitting. A lawsuit challenging the I-93 approvals under the National Environmental Policy Act and the Clean Water Act is anticipated in the coming months.

### *Aeronautics, Rail and Transit*

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Rail and transit projects also took on renewed focus. The last two years saw continued expansion and improvement of multimodal facilities in Concord and Portsmouth, as well as the proposed expansion of passenger rail service to Nashua. The latter project suffered a significant, if not wholly unanticipated, setback when the Supreme Court ruled in *NHMTA v. State*, 150 N.H. 762 (2004), that highway funds could not be expended on rail projects. The multimodal projects have fostered a host of legal issues involving leases, funding, environmental documentation and property acquisition.

Several actions have also raised issues regarding the legality of the State's use of unused rail corridors for recreational trails. For example, in *Appalachian Mountain Club v. NHDOT, et al.*, an environmental group has challenged the proposed use of a rail corridor for a snowmobile trail. While this case is nearing a mutually satisfactory conclusion, other pending cases also raise the issue. The outcome of these actions may have significant long term ramifications to the State's desire to preserve railroad corridors and its trail system.

### *Personal Injury and Property Damage Claims*

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Tort claims handled by the Bureau encompass a variety of claims of death, personal injury and property damage allegedly caused by the negligent design, construction or maintenance of the State's transportation system. In the last biennium, the Bureau faced 105 tort claims, a slight increase over the previous biennium's 83. A total of \$38,932 was awarded against the NHDOT and settlements totaling \$90,690 were paid out during the two-year period. Despite the increase in total claims, the resulting sum of \$129,622 in payments to claimants represents a slight decrease from the total of \$213,219 paid during the previous biennium.

### *Contract Law*

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The Bureau reviewed and approved over 480 State contracts and 205 leases during the recent

two-year period. Many of these contracts were unique or highly complex in nature. Implementation of E-ZPass, for instance, required substantial legal work to complete the multi-state operating agreement so that it conformed to New Hampshire law. The bid preparation and award process required significant legal research. Several bid disputes arising from major construction projects were resolved without the need for litigation.

### *Human Resources*

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Human resources and employment law issues at NHDOT remain a significant source of activity. By being proactive early in the process with important personnel investigations, the Bureau has directly assisted the NHDOT in managing its risks in these types of cases and reducing its liability exposure. In the last biennium, approximately 27 claims of sexual harassment/ hostile work environment were made to NHDOT, with subsequent investigations monitored by the Bureau. The Bureau reviewed and oversaw approximately 200 to 212 issues involving discipline ranging from counselings, suspensions and demotions to terminations. The Bureau directly contributed to NHDOT's record of having all its employment actions sustained by the Personnel Appeals Board, and dismissal of every complaint brought before the Human Rights Commission in the last biennium.

The primary mission of the Office of the Chief Medical Examiner (OCME) is the investigation of sudden, unexpected or violent death. By statute (RSA 611), there are twenty-five categories of death reportable to the medical examiner for inquiry. This inquiry includes an investigation into the circumstances of death and examination of the body, including performance of an autopsy. Goals and objectives of this process include determination of cause and manner of death as well as proffering, when scientifically defensible, a hypothesis regarding specific aspects of the fatal episode. While aiding law enforcement in the investigation of violent death, approximately 40% of all medical examiner's cases are the result of natural causes; thus the OCME serves a vital public health function in monitoring the overall health of citizens of the State. OCME also serves as a consultant to various entities regarding wound pattern recognition and mechanisms of injury in non-fatally injured persons.

### *Case Work*

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More than 12,000 cases required contact with a medical examiner at some level during the biennium. Of these cases, approximately 2099 required in-depth investigations and, of those, many required a detailed scene investigation. Several hundred telephone consultations were also conducted. Autopsy examination was performed in 771 cases.

### *Specimen Retention and Histology*

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From autopsied cases during the biennium, over 3,200 additional specimens of blood, tissue, vitreous and other biological samples

were retained. Histological studies were conducted on hundreds of cases and over 2,800 histologic slides were reviewed.

### *Service to the State*

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During the biennium, the Office of the Chief Medical Examiner has provided the following services:

- Reviewed medical and police records connected to homicides and other crimes for the Attorney General's Office, County Attorneys and the Division for Children, Youth and Families (DCYF);
- Provided clinical assessment of injuries to victims of interpersonal violence at the request of DCYF, police, County Attorneys and Public Defenders;
- Provided full-time, around the clock coverage by trained assistant deputy medical examiners to all ten counties;
- Participated as a member of the Sudden Unexplained Infant Death Investigation Training & Dissemination Core Team under the auspices of the Center for Disease Control (CDC);
- Provided testimony at depositions and trials as needed;
- Consulted with prosecutors, law enforcement, forensic laboratory personnel, and hospital laboratories, private physicians, and hospital personnel as needed;
- Provided twenty-four hour a day coverage for consultations with county medical examiners and homicide prosecutors;
- Maintained and updated procedures and protocols for disaster management and preparedness, participated in disaster training exercises, both tabletop exercises and an actual drill at Pease Tradeport, and both tabletop exercises and an actual drill at Manchester Airport;
- Provided toxicology reports for all fatal motor vehicle accidents to the Division of Enforcement (Department of Safety);
- Provided data and complete reports on all drug, poison and alcohol related deaths to the New Hampshire Poison Information Center, New Hampshire Alcohol and Drug Abuse Prevention Program, the National Pediatric Toxicology Registry, and the federal Drug Abuse Warning Network;
- Completed U.S. Department of Labor Reports on all work-related fatalities;
- Completed reports for the U.S. Consumer Product Safety Commission on all deaths involving commercial products and residential buildings (including falls) and continued to participate in the MECAP Project;
- Provided other data and reports on all appropriate cases to the Federal Food and Drug Administration, Drug Enforcement Agency, Office of the Ombudsman, Federal Aviation Administration, National Highway Transportation Safety Administration, National Transportation Safety Board, and Occupational Safety and Health Administration;
- Presented a regular schedule of lectures and otherwise participated in medical resident and student training at Dartmouth Medical School, Department of Pathology;
- Presented a regular schedule of lectures and otherwise participated in physician assistant training at Massachusetts College of Pharmacy & Health Sciences, Manchester;

- Conducted training programs for law enforcement, fire service and other safety responders, pre-hospital (EMT/Paramedic) personnel, medical and nursing staff, attorneys, high school and college level students, victims' assistance volunteers, and medical examiners across the State;
- Participated in multiple state committees, task forces and conference groups including the Child Fatality Review Committee, the Domestic Violence Fatality Review Committee, Youth Suicide Prevention and Awareness Committee, Trauma Review Committee, Teen Motor Vehicle Legislative Task Force, NH Coalition to Prevent Shaken Baby Syndrome, Vital Records Improvement Fund Advisory Committee, Child Abuse and Neglect Committee of the NH Pediatric Society, the Attorney General's Task Force on Child Abuse and Neglect and the NH Injury Data Work Group;
- Participated in multiple state, national and international professional organizations including the National Association of Medical Examiners, American Academy of Forensic Sciences, Association of SIDS and Infant Mortality Programs, National Domestic Violence Advisory Board, American Academy of Pediatrics, and College of American Pathologists;
- Submitted, presented and/or published scientific papers in professional forums and scientific journals;
- Participated in MEDEX (medical examiner surveillance program); and
- Provided training to clinicians and other health care providers on a broad range of issues in forensic medicine.

## Program Administration

The New Hampshire Department of Justice administers a variety of programs which provide service to all areas of New Hampshire's criminal justice system. These programs are supported by federal, state and dedicated funds and are administered by the following units:

innocent victims of violent crime. A Victim Assistance Commission was established and consists of five individuals who are nominated by the Attorney General and confirmed by the Governor and Executive Council. This program is funded by money collected through penalty assessment on fines and by a federal grant. In SFY 2004 and 2005, the

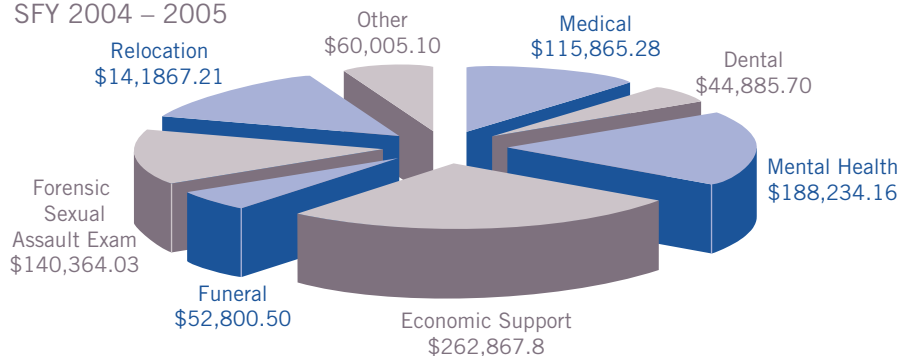
Compensation was able to pay for relocation assistance, provide mental health therapy for both Michelle and her children, and replace lost wages, allowing her to get back on her feet and rebuild her life.

Donna's mom came to the Victim's Compensation Program seeking funding for mental health therapy for her young daughter who had been sexually abused by a step uncle repeatedly for over a year. This valuable program allows children such as Donna to receive the care that is so necessary to their recovery.

The Victim's Compensation Program is the payer of last resort, after all charity care, health insurance, worker's compensation, or settlement funds have been made available, if they exist. This unit is staffed by two individuals.

## Victim's Compensation

SFY 2004 – 2005



## Witness Payment Unit

Since 1992, this agency has had the responsibility for paying all law enforcement and civilian witnesses who are subpoenaed by the state in criminal cases. In State Fiscal Year (SFY) 2004 and 2005, the office processed witness payments totaling \$1,617,415 for over 70,000 witnesses. This unit is staffed by one individual.

Victim's Compensation Unit paid \$1,006,890 to victims.

These funds allowed for relocation of 69 families in life-threatening situations, replaced lost wages and loss of support for 95 families, provided mental health therapy for 157 families and educated numerous victims on other available care in order to maximize their benefits. There were over 800 claims processed during this biennium.

The difference this program makes in the lives of victims is astounding. Two examples, with pseudonyms follow:

Michelle came to the Victim's Compensation Program through a crisis center after escalating violent incidents by her husband, which were witnessed by the children. Michelle and her children sought shelter at a crisis center because of her fear of returning home. Victim's

## Grants Management Unit

The Grants Management Unit exists to make a difference in the lives of the citizens of New Hampshire by ensuring the proper use of federal funds for criminal justice purposes. This unit began in 1985 with the Crime Control Act of 1984. Currently this unit administers twenty different grant program units with expenditures over the last biennium of \$31,616,618 and operates with just four grant administrators. As the graph to the left indicates, there are four purpose areas focusing on crime prevention and justice. These four purpose areas are: Corrections, Victims, the Multi-Jurisdictional Drug Task Force and Other Criminal Justice Areas.

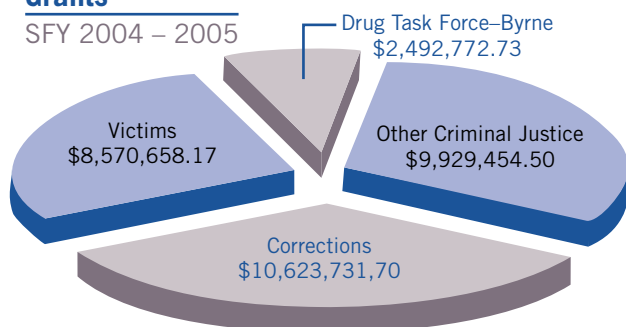
There were a total of 293 separate grants awarded over the two-year period. These awards went to city/towns (60), non-profit agencies (40), county

## Victim's Compensation Unit

In 1990, New Hampshire embarked upon a program to assist in the reimbursement of

## Grants

SFY 2004 – 2005





agencies (17) and state agencies (9). Some agencies received multiple grants.

Because of grant dollars, New Hampshire's citizens receive many services that would not otherwise be available. A partial list of programs benefiting from these grant dollars follows:

*Programs in the Correctional Arena \$10,623,731.70*

- Substance abuse treatment for men in prison and for boys at the Youth Development Center; recently programs were added to include women in prison and girls at the Youth Development Center
- Construction of the new YDC facility in Manchester
- Post-secondary education/training for youth offenders up to age 25, SFY 04 only

*Programs for Victims \$8,570,658.17*

- Child advocacy centers for victims of child sexual assault and child abuse. These centers are designed to minimize the trauma inflicted on child victims through multidisciplinary teams who assist in the investigation of child abuse and recommend and ensure follow through with the best course of treatment for the child. Four centers opened in N.H. during the biennium: Derry, Nashua, Laconia, and Grafton-Sullivan. Carroll was funded in this biennium but did not officially open until state fiscal year 2006. Portsmouth's center was already open.
- Victim/witness units exist in all the County Attorneys' Offices

and DOJ grants fund the 6 in the rural counties.

- Funding for various programs with the NH Coalition Against Domestic & Sexual Violence; funding for crisis centers and shelters.
- Seven family visitation centers across the state. Studies have shown that the risk of violence is often greater for victims of domestic violence and their children after separation from an abusive situation. These centers provide a safe environment for the safe visitation and exchange for NH families with a history of family violence.
- Seven domestic and sexual violence prosecutors located in the counties of Belknap, Cheshire, Coos, Grafton, Hillsborough, Merrimack, and Rockingham.
- Court appointed special advocacy programs; also, funding for Americorps and CASA.
- Victim-offender mediation programs.
- Prosecution and law enforcement based victim advocacy programs.
- Ongoing comprehensive training for advocates, law enforcement, prosecutors, and various members in the field.

*Drug Task Force Programs \$2,492,772.73*

- Multi-jurisdictional drug task force of approximately 30 individuals from many police departments across the state (see Criminal section for details).

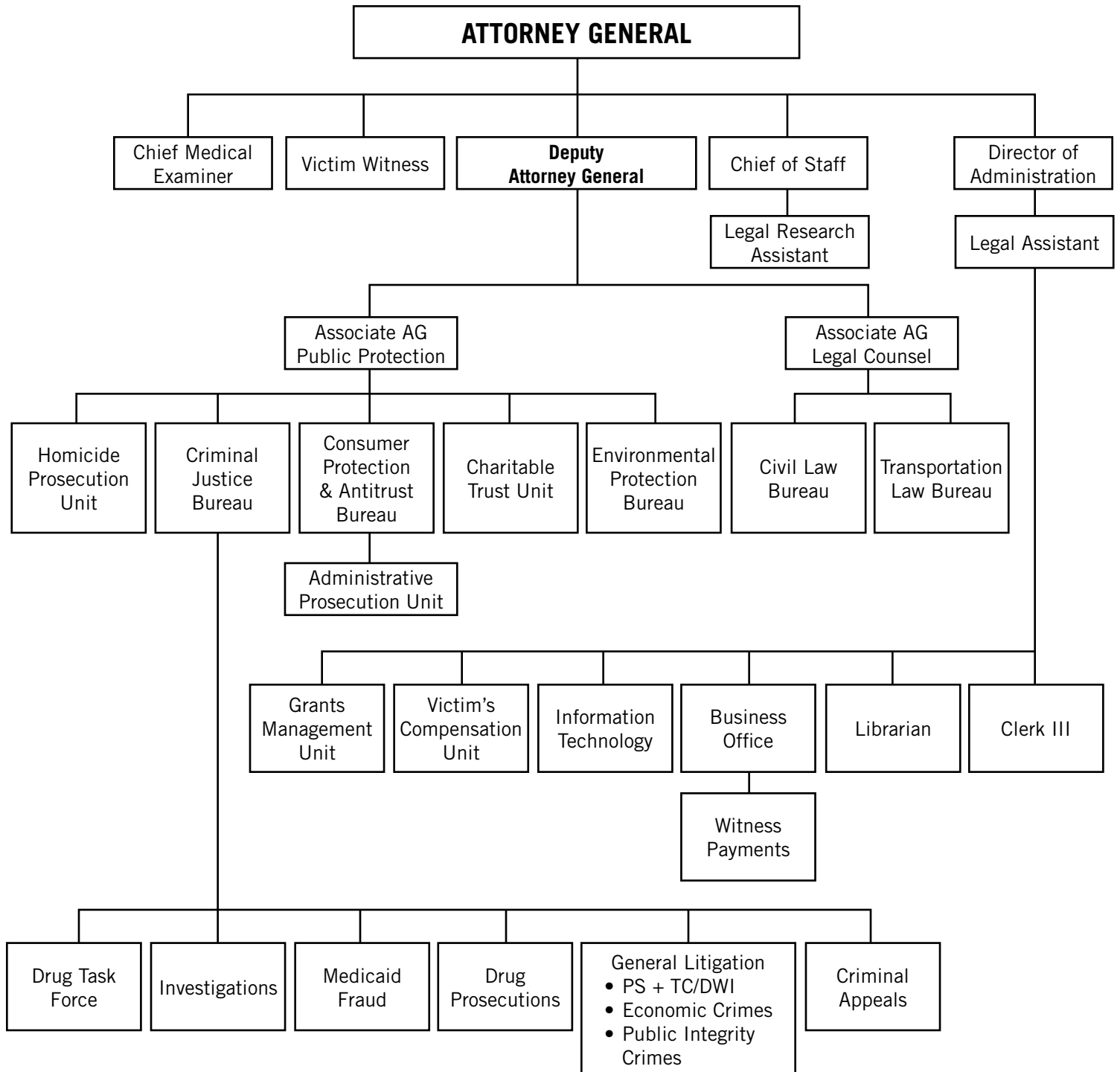
*Other Criminal Justice Programs \$9,929,454.50*

- Development of strategic cybercrime efforts in NH involving all levels of enforcement.
- Ongoing efforts with J-One—a comprehensive criminal justice information system involving the courts, state police, and corrections.
- Assisting local law enforcement agencies in purchasing records management systems capable of reporting to the FBI's National Incident Based Reporting System.
- Aggressive funding for both police departments and the Liquor Commission to combat underage drinking.
- HAVA funding to assist with the Help America Vote Act requirements.
- Funding for state and local law enforcement and emergency medical services from domestic preparedness funding made available prior to September 11, 2001.
- Statewide training at 607 sites for all police departments and critical access areas.
- Mentoring programs for children considered At Risk Youth encompassing after school programs, Boys and Girls Clubs, the YMCA, etc.

After September 11th, 2001 and the creation of Homeland Security, some of the grant programs mentioned here were either eliminated or have received reduced funding. Those that continue are always at risk from competing funding needs at the federal level.

More details as to the level of funding and grand type are as follows:

Grant Types	FY04	FY05	Total
Drug Task Force – Byrne	1,347,087.40	1,145,685.33	2,492,772.73
<i>Other Criminal Justice</i>			
Byrne	297,196.09	285,528.47	
Byrne Evaluations	99,179.79	82,383.24	
Bulletproof Vest	18,352.13		
Distance Learning Earmark	1,363,600.00	1,517,418.00	
Domestic Preparedness	1,437,032.89	2,238,370.50	
Enforcing Underaged Drinking Laws	406,127.34	329,159.89	
Help America Vote Act	23,649.28	105,001.11	
Local Law Enforcement Block Grant	153,179.60	152,456.63	
<i>Youth At Risk – Byrne</i>	428,846.79	209,274.81	
National Governors Association CJIS Training Grant	17,366.83		
Natl. Criminal History Improvement Program	118,969.78	426,493.51	
Natl. Forensic Science Improvement	6,050.73	46,204.33	
Project Safe Neighborhoods	1,689.37	83,616.86	
Statistical Analysis Center	42,654.23	39,652.30	
Other Criminal Justice	4,413,894.85	5,515,559.65	9,929,454.50
<i>Corrections</i>			
Residential Substance Abuse Treatment	383,897.33	138,433.69	
Violent Offender Incarceration/Truth in Sentencing	1,215,853.73	8,882,438.62	
Youth Offender Program	3,108.33		
Corrections	1,602,859.39	9,020,872.31	10,623,731.70
<i>Victims</i>			
Children's Justice Act	48,468.79	45,770.80	
Rural Domestic Violence & Child Victimization	199,760.92	233,799.77	
Safe Havens Visitation Centers	345,365.40	354,706.22	
State Victim Fund - Victim Compensation State Portion	417,015.29	294,890.89	
State Victim Fund Grants to Victim Programs	382,808.89	425,743.80	
Victims Compensation - Federal	120,939.89	147,288.65	
Victims of Crime Act	1,796,854.01	1,760,416.00	
Violence Against Women Act	1,035,404.05	961,424.80	
Victims	4,346,617.24	4,224,040.93	8,570,658.17
<i>Totals</i>			
<b>Drug Task Force - Byrne</b>	<b>1,347,087.40</b>	<b>1,145,685.33</b>	<b>2,492,772.73</b>
<b>Other Criminal Justice</b>	<b>4,413,894.85</b>	<b>5,515,559.65</b>	<b>9,929,454.50</b>
<b>Corrections</b>	<b>1,602,859.39</b>	<b>9,020,872.31</b>	<b>10,623,731.70</b>
<b>Victims</b>	<b>4,346,617.24</b>	<b>4,224,040.93</b>	<b>8,570,658.17</b>



## Appendix A

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### Reports Required Under RSA 570-A:10, III and RSA 570-B:7 (Authorized Recordings)

During the biennium, the Attorney General filed seventeen petitions for authorization to intercept telecommunications under RSA 570-A:7, all of which were granted. In addition, the court granted thirty-seven petitions for an extension of the orders authorizing intercepts. The Attorney General applied for and received six orders to install and use pen register devices under RSA 570-B:4. The Attorney General, or designated Assistant Attorneys General, authorized over 900 interceptions pursuant to RSA 570-A:2.

## Appendix B

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### Personnel Data

<i>Current Number of Positions</i>	<i>6/30/04</i>	<i>6/30/05</i>
1. Unclassified	69	69
2. Classified	64*	62
3. Temporary	1	1
<b>TOTAL</b>	<b>134</b>	<b>132</b>

*\*two positions were transferred to OIT*

### PHYSICAL PLANT AND PROPERTY APPRAISAL

	<i>6/30/04</i>	<i>6/30/05</i>
1. Equipment	\$ 1,865,030.58	\$ 2,163,596.51
2. Physical Plant	0	0
3. Farm	0	0
4. Highway	0	0
<b>TOTAL</b>	<b>\$ 1,865,030.58</b>	<b>\$ 2,163,596.51</b>



## Receipts And Expenditures

	SFY 04	SFY 05
<b>Receipts</b>		
1 Federal Funds	\$12,744,652	\$21,111,940
2 Fees, Registrations, Fines, Forfeitures - restricted	987,338	1,314,085
3 Transfers from Other Agencies	1,832,471	1,818,398
4 Health Club Registrations - unrestricted	21,475	16,590
5 Consumer Land/Condo Registrations - unrestricted	165,945	168,189
6 Judgements and Recoveries - unrestricted	765,436	503,282
7 Tobacco Settlement	41,396,185	41,976,609
8 All Other Sources	7,581,194	7,775,080
<b>Total</b>	<b>\$65,494,696</b>	<b>\$74,684,173</b>
<b>Expenditures</b>		
1 Permanent Personnel	\$6,402,334	\$6,379,643
2 Current Expense incl Rent and Trfr General Services	437,203	428,111
3 Transfers to OIT <i>(Positions not transferred until SFY 05)</i>	54,165	172,263
4 Equipment	45,463	80,835
5 Benefits incl Retirees Benefits	2,070,739	2,351,777
6 In State Travel	58,914	54,452
7 Out of State Travel	48,926	60,613
8 Litigation	628,612	749,625
9 Witness Fees	799,845	817,570
10 Miscellaneous	360,050	505,753
<b>Total</b>	<b>\$10,906,251</b>	<b>\$11,600,642</b>
<b>Disbursements to Cities, Towns, Non-Profits and On Behalf of Victim's</b>		
1 Towns	\$3,467,422	\$2,298,580
2 Counties	699,975	516,205
3 Non-Profits	2,523,428	2,586,054
5 Victim's Compensation Payments/Victim's Assistance Grants	1,007,028	1,048,363
<b>Total</b>	<b>\$7,697,853</b>	<b>\$6,449,202</b>
<b>Disbursements to State Agencies</b>		
1 Department of Justice	\$74,656	\$155,373
2 New Hampshire Multijurisdictional Drug Task Force	841,634	716,293
3 Department of Corrections	591,959	246,966
4 Division of Alcohol and Drug Abuse Prevention	25,370	48,568
5 Department of Safety	749,548	2,149,047
6 Admin. Office of the Courts	404,474	621,040
8 DHHS - YDC facility	1,160,843	8,916,193
9 New Hampshire Liquor Commission	134,945	91,048
10 Police Standards and Training	12,128	222,000
11 Department of Administrative Services		132,394
12 Miscellaneous to State Agencies	2,996	36,692
14 University	349,894	464,340
<b>Total</b>	<b>\$4,348,447</b>	<b>\$13,799,954</b>
<b>Total of all Expenditures</b>	<b>\$22,952,551</b>	<b>\$31,849,798</b>

## Appendix D

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### OPINIONS

*July 1, 2003 – June 30, 2005*

Opinion No.: OPN-04-00001  
Date Response: March 10, 2004  
Requesting Party: Bureau of Emergency Management  
Directed To: James C. Van Dongen, Public Information Officer  
Subject: Liability and Benefits Questions Regarding Emergency Volunteers  
Written By: Nancy J. Smith

Opinion No.: OPN-04-00002  
Date Response: September 2, 2004  
Requesting Party: Department of Environmental Services  
Directed To: Michael P. Nolin, Commissioner  
Subject: Interaction Between the Shoreland Protection Act and Other State  
and Municipal Regulatory Programs  
Written By: Jennifer J. Patterson

## Appendix E

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### Expenditures Pursuant To RSA 7:12

#### SFY 2004

*November 18, 2003 letter to Fiscal and G&C*

RSA 7:12 request for \$142,275 for litigation for the case State v. Manuel Gehring.

*March 30, 2004 letter to Fiscal and G&C*

request to use remaining Gehring funds for general litigation expenditures.

#### SFY 2005

*January 19, 2005 Fiscal Meeting*

RSA 7:12 request for \$425,000 for litigation expenditures to address the balance of the year, thereby increasing the total budget to \$750,000. Approved at a January 26, 2005 special meeting. Paid expenditures for the year were \$744,564.19. A balance of unpaid billings of \$60,859.59 was carried forward into SFY 2006.

*April 19, 2005 Fiscal Meeting*

RSA 7:12 request for \$55,000 for autopsy expenditures to address the balance of the year. The revised appropriation was \$215,000 and was fully expended. In addition, another \$22,155.60 was paid from the Escrow account totaling \$237,155.60 for autopsy billings for SFY 2005.



## Visit the Department of Justice Website

[www.doj.nh.gov](http://www.doj.nh.gov)

### **Charitable Trusts Unit**

[www.doj.nh.gov/charitable/consumer.html](http://www.doj.nh.gov/charitable/consumer.html)  
If you wish to register a charity or check on the legitimacy of one, call (603) 271-3591

### **Consumer Protection & Antitrust Bureau**

[www.doj.nh.gov/consumer/index.html](http://www.doj.nh.gov/consumer/index.html)  
Consumer Hotline 1-888-468-4454

### **Election Law Questions/Complaints**

[www.doj.nh.gov/elections/complaints.html](http://www.doj.nh.gov/elections/complaints.html)  
1-866-868-3703

### **Environmental Protection Bureau**

[www.state.nh.us/nhdoj/environmental.html](http://www.state.nh.us/nhdoj/environmental.html)

### **Medicaid Fraud Unit**

[www.doj.nh.gov/medicaid/whotocall.html](http://www.doj.nh.gov/medicaid/whotocall.html)  
To report suspected Medicaid/healthcare patient fraud/abuse, call (603) 271-1246

### **Victim's Assistance Commission**

[www.doj.nh.gov/04/victim/compensation.html](http://www.doj.nh.gov/04/victim/compensation.html)  
1-800-300-4500

### **Criminal Justice Bureau**

Public Integrity Complaints (603) 271-3671

### **Other Department of Justice Bureaus** **Civil**

**Transportation and Construction**

**Victim/Witness Advocates**

call (603) 271-3658



*(l to r) Robert Varney, Regional Administrator for Environmental Protection Agency; Governor John Lynch; Kelly Ayotte, Attorney General; Michael Connor, Director of Plant and Property Management*